SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 147

RAYMOND L. HAYNES, PETITIONER,

vs.

WASHINGTON

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

INDEX

	Original	Print
Record from the Superior Court of the State of Washington in and for the County of Spokane		
Information	A	1
Defendant's requested instructions	B	2
Court's instructions to the jury	U	11
Verdicts of guilty	OO	21
Motion for a new trial	QQ	22
Motion in arrest of judgment	RR	22
Order denying motion of defendants for new trial and arrest of judgment	SS	23
Judgment, sentence and commitment upon verdict of guilty —Raymond L. Haynes	TT	24
Notice of appeal	UU	26
Praecipe	VV	27
Clerk's certificate (omitted in printing)	WW	
Appearances	2	28
Statement of facts	3	28
Testimony of		
Harold L. Shane—direct	5	28
cross	21	38

	Original	Print
Joseph E. Usher—direct	87	39
cross	96	44
redirect	102	48
recross	103	49
redirect	105	50
H. Douglas Pike—direct	106	50
cross	110	51
Sherman E. Wakeley—direct	120	51
cross	127	55
Harry H. Cockburn—direct	142	62
cross	149	67
Dorothy Jeanes—direct	157	72
cross	160	74
Carroll D. Gray—direct	167	75
cross	169	77
Defendant's motion to dismiss and denial thereof	176	82
Plaintiff's Exhibit No. 6—Statement of Raymond LeRoy Haynes read into record	183	83
Plaintiff's Exhibit No. 7—Statement of Keith Edward Haynes read into record	192	88
Testimony of		
Raymond LeRoy Haynes—direct	204	94
cross	219	102
Albert H. Bombino—direct	231	109
cross	233	111
Robert L. Smith—direct	239	112
cross	243	114
Mrs. Robert L. Smith—direct	245	115
George D. Haynes—direct	250	117
Keith E. Haynes—direct	259	120
cross	269	125
Mrs. Esther Leah Haynes—direct	275	129
Both sides rest	279	132
Exceptions to instructions	280	132
Court's instructions to the jury (copy) (omitted in printing)	284	133
Verdict of guilty (copy) (omitted in printing)	297	133
Judge's certificate	298	133
Reporter's certificate (omitted in printing)	299	134
Plaintiff's Exhibit No. 6—Statement of Raymond LeRoy Haynes	300	134
Proceedings in the Supreme Court of the State of Washington	308	139
Opinion, Finley, Ch. J.	308	139
Dissenting opinion, Foster, J.	321	149
Dissenting opinion, Weaver, J.	340	167
Dissenting opinion, Donworth, J.	341	167

	Original	Print
Petition for rehearing (omitted in printing)	343	168
Order denying petition for rehearing	350	169
Order granting stay of execution and enforcement of judgment	352	170
Judgment	352	170
Order granting motion for leave to proceed in forma pauperis and granting petition for writ of certiorari	355	171

(File endorsement omitted)

A IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

No. 15910

STATE OF WASHINGTON, *Plaintiff*,

v.

RAYMOND L. HAYNES and KEITH E. HAYNES, *Defendants*.

Information—Filed February 20, 1958

(RCW 9.75.010)

Comes now the Prosecuting Attorney in and for Spokane County, Washington, and charges the defendants, Raymond L. Haynes and Keith E. Haynes, with the crime of Robbery, committed as follows:

That the said defendants, Raymond L. Haynes and Keith E. Haynes, in the County of Spokane, State of Washington, on or about the 19th day of December, 1957, then and there being, did then and there willfully, unlawfully and feloniously take personal property from another, to-wit: lawful money of the United States of America, the property of Harold L. Shane, in his immediate presence, from his person, against his will, and by means of force and violence and fear of immediate injury to his person.

JOHN J. LALLY
Prosecuting Attorney in and for
Spokane County, Washington

By CARROLL D. GRAY
Deputy

Duly sworn to by Carroll D. Gray
jurat omitted in printing

(File endorsement omitted)

B IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

No. 15910

(Title omitted)

Defendant's Requested Instructions—Filed March 19, 1958

Comes now the defendants above-named and respectfully requests that the following Instructions be given by the Court to the jury in the above-entitled case.

KEOGAN AND KINNIE
Attorneys for the Defendant

/s/ LEROY C. KINNIE
LeRoy C. Kinnie,
of Counsel

PROOF OF SERVICE
(omitted in printing)

C **Instruction No. 1**

You are instructed to find the defendants, Raymond L. Haynes and Keith E. Haynes, Not Guilty of Robbery as charged in the Information filed herein.

Refused March 21-1958
BUNGE, J.

D **Instruction No. 2**

You are instructed that the defendants, Raymond L. Haynes and Keith E. Haynes, are charged by Information with the crime of Robbery; however, before you can return a verdict of guilty as against either of both defendants, you must find from the evidence presented during the trial, each one of the following elements beyond all reasonable doubt:

1) That the defendants, Raymond L. Haynes and Keith E. Haynes, on or about December 19, 1957, took personal property in the form of lawful money

of the United States of America, from the person of Harold L. Shane, or in his immediate presence; and,

2) That the taking of said personal property was against the will of Harold L. Shane, by means of force and violence and fear of immediate injury to his person; and,

3) That on the same date and at said time and place, these defendants were acting wilfully, and unlawfully, and feloniously; and,

4) That on the same date and at said time and place, these defendants took such personal property with the specific intent to deprive the owner thereof; and,

5) That the personal property so taken was the property of the said Harold L. Shane; and,

6) That the taking of the personal property was done in the county of Spokane, state of Washington.

If you find from the evidence in this case that each and every one of the foregoing elements has been established beyond all reasonable doubt, then you should convict the defendants, Raymond L. Haynes and Keith E. Haynes, of the crime of Robbery; however, if you should find from the evidence in the case that any one of the above elements has not been established beyond all reasonable doubt, then you must return a verdict of Not Guilty as to both defendants.

Refused March 21-1958
BUNGE, J.

E

Instruction No. 3

You are instructed that the words, "wilfully," "unlawfully," and "feloniously," as are used in the Information and these Instructions are defined as follows:

a) "Wilfully" means that an act is done intentionally and designedly;

b) "Unlawfully" means an act contrary to law;

c) "Feloniously" means an act done with the intent to commit a crime.

a) *State* vs. *Vanderveer*, 115 Wash. 184
State vs. *Bixby*, 27 Wn(2d) 144

b) *State* vs. *Vanderveer*, 115 Wash. 184

c) *State* vs. *Smith*, 31 Wash. 245

Covered March 21-1958
BUNGE, J.

F **Instruction No. 4**

It is an essential element of the crime of Robbery that the property be taken from its possessor by force or violence or by putting said person in fear of immediate injury.

By "force" or "violence" is meant all violence inflicted directly on the person, but the degree of force is immaterial as long as it is sufficient to compel one to part with the possession of his property. By "putting in fear" is meant all demonstration of force, intimidation, threats, menaces, or other means by which a person is put in fear of injury to his person sufficient to suspend every exercise of the will or prevent resistance to the taking.

Given March 21-1958
BUNGE, J.

G **Instruction No. 5**

You are instructed that although you may believe the defendants to be guilty of some crime, it is your duty to find them Not Guilty of the crime of Robbery unless you believe and are convinced beyond all reasonable doubt, as that term has been defined to you in these Instructions, that the state has proved beyond all reasonable doubt that the defendants are guilty of the crime of Robbery as that crime has been defined to you in these Instructions.

Refused March 21-1958
BUNGE, J.

H

Instruction No. 6

You are instructed that the defendant is presumed to be innocent of the crime with which he is here charged. This presumption is part of the law of the land and it is not to be disregarded by you at pleasure. There is no duty resting on the defendant to prove or otherwise establish his innocence; nor, to point out or correct any deficiency that may or may not appear at the present in the State's case. The burden of proving a defendant guilty of the offense charged beyond all reasonable doubt is wholely upon the state.

This presumption of innocence is not designed to aid one who is guilty to escape, but so far as human agencies are able, it is intended to prevent any innocent person from being unjustly punished. It continues with the defendant throughout all stages of the trial and every part of your deliberation until it has been removed or overcome by the evidence in this case beyond all reasonable doubt.

(as to "pointing out deficiencies in the State's case")

Covered March 21-1958
BUNGE, J.

State vs. *O'Dell*, 46 W. (2d) 206

I

Instruction No. 7

You are instructed that the term "reasonable doubt" as used in these Instructions means a doubt founded upon some good reason arising from the evidence or lack of evidence in the case. It must be of such character as would cause a man or woman a reasonable prudence to hesitate and pause before acting were the same kind of doubt interposed in other serious concerns of life. It is not a mere fanciful or possible doubt, nor a doubt arising from guess or speculation.

You must use your common sense as men and women of experience possessing some knowledge of worldly affairs, and if, after carefully examining all of the facts and circumstances in this case, you can say and feel that you have a settled and abiding conviction of the guilt of the defendant, then you are satisfied of his guilt beyond a reasonable

doubt and you should return a verdict of guilty. On the other hand, if you do not have such a conviction, then you have a reasonable doubt as to his guilt then your verdict must be Not Guilty.

Covered March 21-1958
BUNGE, J.

State vs. *Vukich,* 158 Wash. 326

J **Instruction No. 8**

The intent, or purpose, with which an act is done or committed, is a mental process and as such generally remains hidden within the mind where it was conceived, and positive proof of which is seldom available. It is to be arrived at by such just and reasonable deductions or inferences from all the surrounding facts and circumstances and from all the evidence in the case as the guarded judgment of a careful and cautious man or woman would ordinarily draw therefrom.

Refused March 21-1958
BUNGE, J.

K **Instruction No. 9**

You are instructed that the law in the State of Washington, that was in force and effect at the time the alleged robbery took place, with respect to voluntary intoxication as being a defense available to this defendant in this case is as follows:

> "No act committed by a person while in a state of voluntary intoxication shall be deemed less criminal by reason of his condition, but whenever the actual existence of any particular purpose, motive or intent is a necessary element to constitute a particular species or degree of crime, the fact of his intoxication may be taken into consideration in determining such purpose, motive or intent."

You are further instructed that under this law, voluntary intoxication, if it be sufficient to prevent the forming of an intent to commit the offense, is a defense in all those cases where intent is a necessary element to constitute the crime

charged. In that regard you are instructed that the crime of robbery includes the elements of the crime of larceny, one of which is an intent to deprive the owner of the things taken.

Thus, if you find from the evidence in this case, that the defendants, or either of them, was in a state of voluntary intoxication at the time the alleged offense was committed, then such condition should be considered by you together with all of the facts established by the evidence to determine whether the state of intoxication was of a degree sufficient to prevent the forming of a specific intent to deprive the owner of the property taken by these defendants, or either of them.

If, under the evidence in this case, you find the intoxication was of a degree sufficient to prevent the forming of a specific intent to deprive the owner of the property taken, by these defendants, or either of them, then I instruct you that such condition would be a complete defense to the crime herein charged for the defendants or defendant in such condition.

Refused March 21-1958
BUNGE, J.

R.C.W. 10.46.160
State vs. *Byers*, 136 Wash. 620

L **Instruction No. 10**

You are instructed that under the statutes of this State it is unlawful for any officer or person having custody and control of the body or liberty of any person under arrest to refuse permission to such arrested person to communicate with his friends or with an attorney, or to subject such arrested person to any form of personal violence, intimidation, indignity, or threats for the purpose of extorting from such arrested person incriminating statements or a confession.

Therefor, if you find from all the evidence in this case that the defendants, or either of them, after being placed under arrest, were refused permission by the officer then and there having control of said defendants, to make a telephone call or otherwise contact an attorney, or relative,

or friend, then you may take such refusal in to consideration as bearing upon the question of whether the admissions or confessions, if any, made by these defendants, or either of them, were voluntarily made by them, or either or them, and also upon the question of whether such admissions and confessions, if any, were made by these defendants, or either of them, while under the influence of inducement.

Covered March 21-1958
BUNGE, J.

R.C.W. 9.33.030

M **Instruction No. 11**

You are instructed that under the statutes of this State, the admissions of a defendant made under inducement, with all the circumstances, may be given in evidence against him except when made under the influence of fear produced by threats. You are further instructed that admissions are to be received and considered with great caution. If, upon the whole testimony, you are satisfied that any admissions were made by these defendants, and are also satisfied that the same were voluntary on the part of the defendant, or defendants, making them, then the same shall be considered by you as evidence in the case. If otherwise, they shall not be considered as evidence. An admission by an accused, is voluntary if, at the time of making it he is not under the influence of fear produced by threats; that is, if he may or may not speak as he chooses.

However in that regard you are further instructed that an admission made and given under inducement is not sufficient to warrant a conviction unless it is corroborated by other competent evidence in the case.

Covered March 21-1958
BUNGE, J.

R.C.W. 10.58.030
State vs. *Wilson*, 68 Wash. 464 (468)

N **Instruction No. 12**

Any admissions or statements made out of Court by one defendant in this case, are not to be considered as evidence against the other defendant, and you shall disregard the admissions and statements, if any, made out of Court by one defendant as to the other defendant.

Given March 21-1958
BUNGE, J.

O **Instruction No. 13**

You are instructed that the defendant has the right to introduce evidence tending to show that he has a good reputation for honesty and truthfulness and for being a peaceful and lawabiding citizen. When such evidence is introduced it must be considered by you together with all the other evidence in the case in order to determine whether he is guilty of the crime for which he is on trial. If he has shown that his reputation is good, but you are, nevertheless, satisfied from all the evidence in the case beyond a reasonable doubt that he is guilty of the offense for which he is on trial, then you should return a verdict of Guilty. On the other hand, if he has shown that he has a good reputation, and that proof together with all the other evidence in the case causes you to entertain a reasonable doubt of his guilt, then you must return a verdict of Not Guilty.

Covered March 21-1958
BUNGE, J.

P **Instruction No. 14**

You are instructed that no one ought to be convicted of a crime upon mere suspicion or because he may have had an opportunity to commit it, and where circumstances are relied upon for a conviction, they ought to be of such a character as to negative any reasonable hypothesis except that of the defendant's guilt.

Refused March 21-1958
BUNGE, J.

Q **Instruction No. 15**

You are instructed that the fact that an Information is filed against the defendant in this case constitutes no evidence of his guilt. The Information is merely the formal instrumentality provided by law as a means of bringing the defendant to trial and subserves that purpose alone. His guilt must be proved independently of that. In arriving at a verdict therefore, you will give no consideration to the fact that the defendant has been informed against as tending to establish his guilt.

Covered March 21-1958
BUNGE, J.

R **Instruction No. 16**

You are instructed that it is the law of the State that a defendant in any criminal prosecution may or may not testify in his own behalf, as he chooses, and it is my duty to instruct you that no inference of guilt shall arise against the defendant if he does not testify as a witness in his own behalf.

Not Given March 21-1958
BUNGE, J.

S **Instruction No. 17**

You are instructed that as to any evidence admitted during the trial of this case showing or tending to show prior conviction of crime or crimes of the defendant, or either of them, such evidence, if any, may be considered by you solely and only insofar as it may or may not affect the credibility of the defendants, or defendant, concerned, and the weight and value to be attached to his testimony, and for no other purpose whatsoever. The fact, if you find it to be a fact from the evidence in this case, that the defendants, or defendant, has been previously convicted of any crime or crimes, is not evidence of the commission of the crime with which they or he is here charged and must not be considered as such by you.

Covered March 21-1958
BUNGE, J.

T **Instruction No. 18**

You are instructed and reminded that each of you has taken a solemn oath that will well and truly try this case and a true verdict render upon the evidence given in the trial and upon the law as given you by the Court. You have nothing at all to do with the punishment to be inflicted in case of violation of law. The fact that punishment may follow a conviction cannot be considered by you except insofar as it may tend to make you careful.

Covered March 21-1958
BUNGE, J.

(Title omitted)

U IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

No. 15910

(File endorsement omitted)

Hon. Louis F. Bunge, J.
March 21st, 1958.

Court's Instructions to the Jury—Filed March 21, 1958
Statement of the Issues

MEMBERS OF THE JURY:

The defendants in this case, Raymond L. Haynes and Keith E. Haynes, are accused by an Information filed in this court with the crime of robbery, the charging part of said Information reading as follows:

> "That the said defendants, Raymond L. Haynes and Keith E. Haynes, in the County of Spokane, State of Washington, on or about the 19th day of December, 1957, then and there being, did then and there willfully, unlawfully and feloniously take personal property from another, to-wit: lawful money of the United States of America, the property of Harold L. Shane, in his immediate presence, from his person, against his will, and by means of force and violence and fear of immediate injury to his person."

To the charge contained in the Information each defendant has entered a plea of Not Guilty, and this plea puts in issue every material allegation of the Information, and the burden is upon the State to prove every such allegation beyond a reasonable doubt.

V You are instructed that this Information is a mere accusation, no evidence of guilt of the defendants, and you should not permit yourselves to be in any degree influenced against them by reason thereof.

W **Instruction No. 2**

These instructions are given by the Court as a whole and are to be so considerd by you. Each and every instruction is to be considered by you in connection with all the other instructions.

Your verdicts must be based upon the evidence. In arriving at them you should not discuss or consider anything in connection with this case except the evidence received upon the trial. You must not consider any evidence that has been stricken out or withdrawn from your consideration by the rulings of the Court during the trial. You are the exclusive judges of the evidence, but it is your duty to accept the law from the Court as given to you in these instructions.

If I have said anything during the course of the trial, or if in rulings on motions or objections I have made any statement which appears to you to be a comment or opinion on the facts or the weight or convincing effect of the testimony of any witness, or as to the guilt or innocence of the defendants, it is your duty to disregard it. Likewise, the statements of the attorneys in the case made during the trial and in their arguments are not evidence and should not be considered as such by you. Their statements of what the evidence is should be disregarded by you unless they accord with your own recollection of what the evidence is.

X

Instruction No. 3

You are instructed that the defendants are presumed to be innocent of the crime with which they are charged in the Information. This presumption is a part of the law of the land. It is not to be disregarded by you at pleasure. It is not designed to aid one who is guilty, to escape, but so far as human agencies can, it is intended to prevent any innocent person being unjustly punished. It continues with the defendants throughout all the stages of the trial and every part of your deliberations until it has been overcome or removed by the evidence in the case beyond a reasonable doubt.

Y

Instruction No. 4

You are instructed that the Criminal Code of the State of Washington provides as follows:

> "Robbery is the unlawful taking of personal property from the person of another, or in his presence, against his will, by means of force or violence or fear of injury, immediate or future, to his person or property, or the person or property of a member of his family, or of anyone in his company at the time of the robbery. Such force or fear must be used to obtain or retain possession of the property, or to prevent or overcome resistance to the taking; in each of which cases the degree of force is immaterial. If used merely as a means of escape, it does not constitute robbery. Such taking constitutes robbery whenever it appears that, although the taking was fully completed without the knowledge of the person from whom taken, such knowledge was prevented by the use of force or fear."

Z

Instruction No. 5

Before you can find the defendants Raymond L. Haynes and Keith E. Haynes guilty of the crime of robbery charged in the Information, you must find from the evidence in the case beyond a reasonable doubt, under the law stated to you in these instructions, all of the following elements:

1. That the defendants Raymond L. Haynes and Keith E. Haynes, on or about the 19th day of December, 1957, did

take personal property, to-wit, lawful money of the United States of America, from the person of or in the presence of Harold L. Shane;

2. That said money was the property of and belonged to Harold L. Shane;

3. That said money was so taken from said Harold L. Shane against his will and by means of force or violence or fear of immediate injury to his person;

4. That this occurred in Spokane County, Washington.

If you find that any of the foregoing elements has not been established by the evidence in this case beyond a reasonable doubt, you must acquit the defendants, but if you find all of these elements to have been so established, you should convict the defendants.

AA **Instruction No. 6**

It is an essential element of the crime of robbery that the property be taken from its possessor by force or violence or by putting said person in fear of immediate injury.

By "force" or "violence" is meant all violence inflicted directly on the person, but the degree of force is immaterial so long as it is sufficient to compel one to part with possession of his property. By "putting in fear" is meant all demonstration of force, intimidation, threats, menaces, or other means by which a person is put in fear of injury, either to his person or property, sufficient to suspend every exercise of the will or prevent resistance to the taking.

BB **Instruction No. 7**

You are instructed that an act done willfully is done intentionally and designedly.

You are instructed that the word "feloniously" means with intent to commit a crime.

You are instructed that the word "unlawfully" means an act which is contrary to law.

CC **Instruction No. 8**

The defendants are charged jointly with the offense herein alleged, and in that connection you are instructed that it is not necessary that both the defendants personally should have committed the act or acts set out in the Information. If either of the defendants was present aiding, abetting, assisting or counseling the other in the commission of the act in the manner, by the means and with the intent set forth in the Information herein and in these instructions, then such defendant would be as guilty as though he personally had committed the act or acts charged.

DD **Instruction No. 9**

Any admissions or statements made out of Court by one defendant in this case, are not to be considered as evidence against the other defendant, and you shall disregard the admissions and statements, if any, made out of court by one defendant as to the other defendant.

EE **Instruction No. 10**

The statute of the State of Washington provides:

> "No act committed by a person while in a state of voluntary intoxication shall be deemed less criminal by reason of his condition, but whenever the actual existence of any particular purpose, motive or intent is a necessary element to constitute a particular species or degree of crime, the fact of his intoxication may be taken into consideration in determining such purpose, motive or intent."

This statute was not designed to give immunity to persons who commit crime when they are inflamed by intoxicating drink. You must discriminate between the conditions of mind merely excited by intoxicating drink, and yet capable of forming a general intent to commit a crime, such as robbery, and such a prostration of the faculties as renders a man incapable of forming a general intent to commit a crime.

If you find that either accused was so drunk at the time he is alleged to have committed the crime charged as to

render him unconscious of his act, incapable of controlling his will, and forming and entertaining a felonious intent, his intoxication is a defense.

FF **Instruction No. 11**

By statute of the State of Washington, it is provided:

> "The confession of a defendant made under inducement, with all the circumstances, may be given as evidence against him, except when made under the influence of fear produced by threats; but a confession made under inducement is not sufficient to warrant a conviction without corroborating testimony."

You are further instructed that a "voluntary confession" is taken to mean a confession made of the free will and accord of the defendant without over-persuasion, and without coercion induced by fear or threat of harm and without inducement by promising or holding out hope of reward or immunity; or, stated in another way, a confession which is forced or extorted in any manner by over-persuasion, promise or threats is an involuntary confession.

The same rule applies to oral admissions made by one accused of crime.

If you believe from the evidence in this case beyond a reasonable doubt that either defendant made any confession or oral admission, then you are instructed to disregard any such confession or admission unless you further find from the evidence beyond a reasonable doubt that such confession or admission, if any, was voluntarily made.

And in this connection, I further instruct you that a confession or admission of a defendant is not rendered involuntary because he is not at the time of making the same reminded that he was under arrest, or that he was not obliged to reply, or that his answers would be used against him, or that he was entitled to be represented by counsel.

GG If you find that confessions or oral admissions were made, and were voluntarily made by the defendants, then it is your province to determine the weight and credit to be given them.

HH **Instruction No. 12**

You are instructed that Subdivision 5 of Section R. C. W. 9.33.020 reads as follows:

> "No officer or person having the custody and control of the body or liberty of any person under arrest, shall refuse permission to such arrested person to communicate with his friends or with an attorney, nor subject any person under arrest to any form of personal violence, intimidation, indignity or threats for the purpose of extorting from such person incriminating statements or a confession."

If you find from the evidence in this case that any officer having custody of either defendant in this case denied him communication with his friends or an attorney in violation of the above statute, then I instruct you that you may consider such denial in connection with the voluntariness of any statement made.

II **Instruction No. 13**

The defendants have introduced evidence tending to show their good character as to being peaceful and decent and law-abiding citizens. If in this case the good character of the defendants in that respect is proven to your satisfaction, then such fact should be kept in view by you in all your deliberations, and it is to be considered by you in connection with all the other facts in the case, and if after a consideration of all the evidence in the case, including that bearing upon the good character of the defendants, the jury entertains a reasonable doubt of the defendants' guilt, it is your duty to acquit them; but if the evidence convinces you beyond a reasonable doubt of the defendants' guilt, you must so find, not withstanding their good character.

JJ **Instruction No. 14**

You are instructed that the fact, if it be a fact, that a defendant has been previously convicted of a criminal offense does not in any way tend to prove his guilt as to the offense charged against him in the Information in this case. Such conviction, if any, is only a circumstance

to be taken into consideration by you in determining the weight and convincing force of his testimony and his general credibility as a witness.

KK **Instruction No. 15**

You are the sole and exclusive judges of the evidence and of the credibility of the several witnesses and of the weight to be attached to the testimony of each. In weighing the testimony of a witness, you have a right to consider his demeanor upon the witness stand, the apparent fairness or lack of fairness, the apparent candor or lack of candor of such witness, the reasonableness or unreasonableness of the story such witness relates, and the interest, if any, you may believe a witness feels in the result of the trial, and any other fact or circumstance arising from the evidence which appeals to your judgment as in any wise affecting the credibility of such witness, and to give to the testimony of the several witnesses just such degree of weight as in your judgment it is entitled to.

You will be slow to believe that any witness has testified falsely in the case, but if you do believe that any witness has willfully testified falsely to any material matter, then you are at liberty to disregard the testimony of such witness entirely, except in so far as the same may be corroborated by other competent or credible proof in the case.

LL **Instruction No. 16**

As I have heretofore told you, the burden is on the State of proving every fact material and necessary to a conviction by competent evidence beyond a reasonable doubt. It is not sufficient that the State should prove these facts by a mere preponderance of the evidence, nor, on the other hand, is it necessary that it should prove them conclusively in such a manner as to leave no room for any doubt whatever. Very few things in the whole domain of human knowledge are susceptible of absolute proof. We can have a moral certainty or a reasonable certainty, which may vary in degree, but rarely an absolute certainty.

The expression "reasonable doubt" means in law just what the words imply—a doubt founded on some good rea-

son. It must not arise from a merciful disposition or a kindly sympathetic feeling, or a desire to avoid performing a disagreeable duty. It must arise from the evidence or lack of evidence. It must not be a mere whim or a vague conjectural doubt or misgiving founded upon mere possibilities. It must be a substantial doubt, such as an honest, sensible and fair-minded man might with reason entertain consistently with a conscientious desire to ascertain the truth.

You must use your common sense as men and women of experience possessing some knowledge of worldly affairs, and if after examining carefully all the facts and circumstances in this case, you can say and feel that you have a settled and abiding conviction of the guilt of the defendants, then you are satisfied of their guilt beyond a reasonable doubt, and you should find them guilty as charged. On the other hand, if you do not have such a conviction, then you have a reasonable doubt of their guilt, and your verdicts should be not guilty.

MM **Instruction No. 17**

You are instructed that it is your duty as jurors to reason together and endeavor to reconcile any discordant or conflicting views which may arise between you during your deliberations. While any of you should not consent to a verdict which you think is contrary to the evidence out of mere deference to your fellow jurors, yet you may and should consider whether a conclusion arrived at in your mind as to the guilt or innocence of the defendants is a reasonable one which makes no impression on the minds of your fellow jurors who have heard the evidence out of which this conclusion arises, and you may properly change your views because of this consideration.

NN **Instruction No. 18**

This is a criminal case and it is necessary for all of your number to agree upon your verdicts.

You will return one of two verdicts as to each defendant, forms for which will be supplied to you. You should return a verdict of guilty or a verdict of not guilty as to each

defendant in accordance with your findings on the evidence, under these instructions.

You will take to your jury room these instructions and any exhibits that may have been received in evidence.

When you retire to your jury room, select one of your number as foreman, and when you have agreed upon your verdicts, you shall select the appropriate blank forms and cause them to be dated and signed by your foreman, whose duty it shall be to speak for you when called upon to do so by the Court. You will then notify the Court through the bailiff that you have arrived at your verdicts, and when so directed you shall come into court with them.

In conclusion, let me remind you that each of you has taken a solemn oath that you will well and truly try this case and a true verdict render upon the evidence given you in the trial and upon the law that is now given you by the Court. You must not allow yourselves in the least to be moved by sympathy or influenced by prejudice. The question of guilt or innocence is a question of fact, and not a question of sympathy or prejudice, or what shall the punishment be. If, as a matter of fact, from the evidence the defendants are guilty, no amount of sympathy will make them innocent. If the defendants are innocent, no amount of prejudice will make them guilty; for regardless of what the penalty may be, regardless of any feeling or prejudice the defendants are, upon the evidence and the evidence alone, either guilty or not guilty. What is the true verdict as to each defendant as shown by the evidence is the one question before you.

You will now listen to the argument of counsel.

(File endorsement omitted)

OO IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

Case No. 15910

Verdict of Guilty—Filed March 24, 1958

We, the jury in the case of

THE STATE OF WASHINGTON, *Plaintiff*

vs.

RAYMOND L. HAYNES and KEITH E. HAYNES, *Defendants*,

find the defendant RAYMOND L. HAYNES GUILTY, as charged in the information.

SPOKANE, WASHINGTON, March 21, 1958.

LA VERNE O. WILLIAMS
Foreman.

Recorded, Journal A-311, Page 34

(File endorsement omitted)

PP IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

Case No. 15910

Verdict of Guilty—Filed March 24, 1960

We, the jury in the case of

THE STATE OF WASHINGTON, *Plaintiff*

vs.

RAYMOND L. HAYNES and KEITH E. HAYNES, *Defendants*,

find the defendant KEITH E. HAYNES GUILTY, as charged in the information.

SPOKANE, WASHINGTON, March 21, 1958.

LA VERNE O. WILLIAMS
Foreman.

Recorded, Journal A-311, Page 35

(File endorsement omitted)

QQ IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

No. 15910

(Title omitted)

Motion for New Trial—Filed March 24, 1958

Comes now the defendants above-named and respectfully move that the Court enter an Order granting a new trial in this cause upon the following grounds:

1) Error of law occurring at the trial and excepted to by the defendants;

2) The verdict is contrary to law and evidence.

Dated this 24th day of March, 1958.

KEOGAN AND KINNIE
Attorneys for the Defendants

/s/ LE ROY C. KINNIE,
of counsel

PROOF OF SERVICE
(omitted in printing)

(File endorsement omitted)

RR IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

No. 15910

(Title omitted)

Motion in Arrest of Judgment—Filed March 24, 1958

Comes now the defendants above-named and respectfully move that the Court enter an Order in arrest for judgment upon the verdict in this case upon the following grounds:

1) That the facts as stated in the Information do not constitute a felony or misdemeanor;

2) That there has been no proof that these defendants were acting with an intent to deprive the owner of his property, which is an essential element of the crime of Robbery for which these defendants were tried.

This Motion is based upon rule 12 of the *Rules of Pleading, Practice and Procedure*, 34-A Wn. (2d) 76.

Dated this 24th day of March, 1958.

KEOGAN AND KINNIE
Attorneys for the Defendants

/s/ LE ROY C. KINNIE,
of counsel

PROOF OF SERVICE
(omitted in printing)

(File endorsement omitted)

SS IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

No. 15910

(Title omitted)

Order Denying Motion of Defendants for New Trial and Arrest of Judgment—March 28, 1958

On this 28th day of March, 1958, this cause came regularly on for rehearing by the Court on motion of the defendants, Raymond L. Haynes and Keith E. Haynes, for a new trial and arrest of judgment and after hearing said motion and the argument of counsel and the Court being fully advised in the premises, it is by the Court

ORDERED, That said motion of the defendants, Raymond L. Haynes and Keith E. Haynes, for a new trial and arrest of judgment be and the same is hereby denied.

Defendants excepts and exceptions allowed.
Done in open Court this 28th day of March, 1958.

LOUIS F. BUNGE
Judge.

ATTORNEY JOHN P. TRACY, JR.
Deputy Prosecuting Attorney

LEROY C. KINNIE
Attorney for Defendants

ORDER

TT IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

Case No. 15910

THE STATE OF WASHINGTON, *Plaintiff*,

vs.

RAYMOND L. HAYNES, *Defendant*.

Judgment, Sentence and Commitment Upon Verdict of Guilty—May 19, 1958

PENITENTIARY

On this 19th day of May, 1958, the above named defendant came into open Court for pronouncement of judgment and sentence, and being asked by the Court if *he* had any legal cause to show why judgment of this Court should not be pronounced in *his* case *he* makes *his* statement, the defendant being represented by LeRoy C. Kinnie *his* counsel.

THEREUPON, it is now by the Court considered and adjudged upon the verdict of the jury finding the defendant guilty of the crime of Robbery as charged in said information, that the defendant now before the Court is guilty and it is now by the Court considered, ORDERED, ADJUDGED AND DECREED, that said defendant Raymond L. Haynes be punished by confinement at hard labor in the WASHINGTON STATE PENITENTIARY, for a term of not more than 20 years, and shall pay the costs of this prosecution taxed at $ .....

The said sentence.... to run Concurrently, Consecutively.

That said defendant shall stand committed to said institution until this sentence is complied with.

It is the further order of the Court that .....

The said defendant is hereby remanded to the custody of the Sheriff of said County to be detained and delivered into the custody of the proper officers for transportation to, and confinement in, said institution.

Done in open Court, in the presence of the said defendant, this 19th day of May, 1958.

LOUIS F. BUNGE
Judge

CERTIFICATE

STATE OF WASHINGTON,
County of Spokane, } ss.

I, the undersigned, County Clerk of Spokane County, and ex-officio Clerk of the Superior Court of the State of Washington, for Spokane County, do hereby certify the foregoing to be a full, true and correct copy of the judgment, sentence and commitment, as the same appears on file and of record in my office, and I further certify that said judgment, sentence and commitment was pronounced, signed and entered in open Court while the defendant was personally present.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court this .....day of ...., 19.....

.....
Clerk

.....
Deputy

PENITENTIARY VERDICT OF GUILTY

(File endorsement omitted)

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

No. 15910

STATE OF WASHINGTON, *Plaintiff*,

vs.

RAYMOND L. HAYNES, *Defendant*.

Notice of Appeal—Filed May 19, 1958

To: STATE OF WASHINGTON, plaintiff abovenamed; and,

To: JOHN P. TRACY, JR., Deputy Prosecuting Attorney.

You, and each of you, are hereby put on notice that the defendant above named, feeling himself aggrieved, does hereby appeal to the Supreme Court of the State of Washington from each and every part of that certain Order denying defendant's Motion for a New Trial, entered herein March 28, 1958; and from that certain Judgment, Sentence and Commitment made and entered herein by the Honorable Louis F. Bunge, Judge of the above entitled court, on May 19th, 1958, wherein and whereby said defendant was adjudged to be Guilty of the crime of Robbery and sentenced to be confined in the Washington State Penitentiary, at Walla Walla, Washington, for a period of not more than twenty (20) years.

Dated this 19th day of May, 1958.

KEOGAN & KINNIE
607 Empire State Building
Spokane, Washington
Attorneys for the Defendant.

/s/ LEROY C. KINNIE
of counsel

RAYMOND L. HAYNES
Defendant
Spokane County Jail
Spokane, Washington

PROOF OF SERVICE
(omitted in printing)

(File endorsement omitted)

VV IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

Praecipe—Filed June 10, 1958

Dated June 10, 1958

Case No. 15910

STATE OF WASHINGTON, }
County of Spokane. } ss.

STATE OF WASHINGTON, *Plaintiff*,

vs.

RAYMOND L. HAYNES, *Defendant*.

TO THE CLERK OF THE SUPERIOR COURT

You will prepare transcript on appeal in the above entitled cause, including therein the following, to-wit:

Marginal No.

No. 1 Information
No. 15 Defendant's Requested Instructions
No. 16 Instructions to the Jury
No. 18 Verdict—Raymond L. Haynes
No. 19 Verdict—Keith E. Haynes
No. 20 Motion for New Trial
No. 21 Motion In Arrest of Judgment
No. 24 Order Denying Defendant's Motion for New Trial and In Arrest of Judgment
No. 28 Judgment, Sentence and Commitment—Raymond L. Haynes
No. 30 Notice of Appeal
This Praecipe

LEROY C. KINNIE
Attorney for Defendant

PROOF OF SERVICE
(omitted in printing)

2 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

No. 15910

THE STATE OF WASHINGTON, *Plaintiff*,

v.

RAYMOND L. HAYNES, *Defendant*.

BEFORE: Hon. Louis F. Bunge, Judge, and a jury.

Date: March 19-21, 1958.

Appearances

For the Plaintiff:
JOHN J. LALLY,
Prosecuting Attorney,

By JOHN P. TRACY, JR.,
Deputy Prosecuting Attorney,
Courthouse
Spokane, Washington.

For the Defendant:
LEROY C. KINNIE AND
GEORGE MCCABE,
Attorneys at Law,
N 4910 Division Street,
Spokane, Washington

3 **Statement of Facts—March 19, 1958**

* * * * * * * * * * *

5 **Plaintiff's Case in Chief**

HAROLD L. SHANE, called and sworn as a witness in behalf of the plaintiff, testified as follows:

Direct Examination:

By Mr. Tracy:

Q. Mr. Shane, I might ask you now at the start of your testimony if you would keep your voice up loud enough so Mr. Kinnie, Mr. Malcolm, the jury and the Court can hear your testimony. Would you try to do that please? A. Yes.

Q. State your full name to the Court and jury. A. Harold L. Shane.

Q. Mr. Shane, where do you reside? A. 2017 East Wellesley.

Q. And approximately how long have you resided at that address? A. Five years.

Q. Five years. What type of work are you in? A. I am a service station operator.

Q. And where is that station located? A. 2023 East Wellesley.

Q. Is that in the County of Spokane, State of W ashington? A. Yes, sir.

Q. Mr. Shane, you have been in the service station business at that location for about five years, is that correct?

A. That is right.

6 Q. And prior to that what type of work did you do? A. Well, I took care of a fleet of equipment. I was fleet maintenance man.

Q. Was that in Spokane? A. Yes.

The Court: Q. What is that? A. I took care of fleet maintenance of trucks and cars.

Mr. Tracy: Q. What company was that with? A. Pacific Fruit and Produce.

Q. And how many years were you with that particular company? A. 21 years.

Q. How long have you been in Spokane, Mr. Shane? A. Since 1923. That would be 35 years, wouldn't it?

Q. And you are a married man? A. Yes.

Q. Do you have a family? A. Yes.

Q. How many children do you have? A. Five.

Q. And where are those children at the present time? A. Well, four of them live in Spokane and one lives in San Francisco.

Q. You have one daughter at home, is that correct? A. That is right.

Q. What is her name? A. Linda.

Q. Mr. Shane, on December 19, 1957 did you work

7 that particular day? A. Yes, I did.

Q. Where were you working at? A. The service station there.

Q. And that service station, again, is located on Wellesley and Crestline? A. That is right.

Q. Mr. Shane, do you work there by yourself or do you have help or what? A. Oh, not when I am there, no.

Q. Does your wife assist you in the operation of the service station? A. Yes.

Q. Just briefly describe to the Court and jury now the layout of that particular station—what it looks like. A. Well, you see the station sets on the northwest corner and we have a lube room separate from it and the house sets west of that, again.

Q. So it is the house and the lube room and then the station, is that correct? A. Yes.

Q. And within the station itself, are there any rooms in the station itself? A. Yes, there is a main room. That is out in the showroom. There is a storage room and the tire room in the back and the rest room is off of that, the men's, and the women's rest room you go from the outside.

Q. The men's rest room is reached by coming into the station? A. On the inside, yes.

Q. And through a door into another room, is that correct? A. That is right.

Q. Now your residence is located on what street? A. On Wellesley.

Q. And that is immediately adjacent to the service station? A. That is right.

Q. Now what is the graphic outline of the property there? A. Well, there is an alley, it runs north and south between us and the next lot.

Q. There is an alley there? A. It runs north and south.

Q. On December 19, 1957 you say that you worked in the station that day, is that correct? A. That is right.

Q. What time did you open in the morning? A. Generally a little after six.

Q. Generally a little after six? A. Yes.

Q. Were you by yourself in the station throughout the day? A. Yes. Sometimes I go to the house and the Mrs. comes over and takes over.

Q. She gives you a hand? A. Yes.

Q. Did she on December 19th? A. I imagine she had. I don't recall exactly.

Q. How was business that particular day? A. It was

kind of a slow day. Thursdays are usually kind of
9 slow.

Q. Toward the latter part of the evening around nine o'clock what were you doing at that time? A. Naturally I was sitting around the fire, that is, in front of the gas heater we have. I was reading a Reader's Digest.

Q. Did anybody come into the station about that time? A. These two men here come in (indicating).

Q. You are pointing to two men? A. Right there (indicating).

Q. The one man to the right of Officer Pike here? A. Yes.

The Court: Step down and point out the two men.

The Witness: Right there and there (indicating).

Mr. Tracy: Q. What happened, if anything, after they came into your station? A. Well, they asked for a bogus address.

Q. Do you recall which one of these men asked for the address? A. Yes, this man over here (indicating).

The Court: I don't know who he means by that.

Mr. Tracy: Q. Would you do this, Mr. Shane: When I asked you which man did, was it the man with the glasses or the man without? A. The man without the glasses.

Q. He asked you for an address? A. Yes.

Q. Do you recall what address he asked you for? A. Yes, I believe it was 2200 on North Alexander.

Q. Did you say anything to him at that time? A.
10 Yes. I said, "You are way off. I don't recall where Alexander is".

Q. You had never heard of that particular street? A. No.

Q. And was anything else said at that time? A. Well, I said, "I will get you a map" and I went and got a map.

Q. Then what happened? A. He said, "Never mind. We will get some change and use a telephone".

Q. Did they give you any money to change? A. Well, he held it out to me.

Q. Who did that? A. The man without the glasses.

Q. He held out some money to you? A. Yes.

Q. Do you recall the denomination of the money? A. As I recall, it was a fifty cent piece.

Q. What did he say? A. When I opened the till he said, "Give me all the bills, to never mind the checks and the silver."

Q. At the time he said that, Mr. Shane, where was the other man here? A. He was standing behind me with something poking me in the back.

Q. Do you know what that was? A. No, I didn't know what it was at the time.

Q. But then did you have any idea what it might be? A. Well, you wouldn't know. A person don't take chances on that kind of stuff, you know.

11 Q. You went into the till then for this money, is that correct? A. That is right.

Q. What did you do then, Mr. Shane? A. Well, I handed the money over to the man without the glasses.

Q. You handed it to him? A. Yes.

Q. This money, who did that money belong to? A. It belonged to us there at the station. We operate the station. We own and operate it.

Q. You and your wife own that money, is that correct? A. That is right.

Q. Mr. Shane, why did you give the man this money? A. Well, I wasn't taking much chances in a case of that kind.

Q. What do you mean by "in a case of that kind"? A. You don't know what is going to happen to you.

Q. Did you have any choice in the matter? A. No, there was no choice. He left no choice to me.

Q. What happened after you gave him the money, Mr. Shane? A. Well, they took me to the back room, into the rest room. Asked me if it could be locked up. I said, "I suppose it could."

Q. Both men took you in? A. Yes, the man with the glasses took hold of my arm and kind of scooted me in.

Q. How about the man without the glasses? A. He went in ahead. He was in ahead of us.

12 Q. So all three of you were in the rest room, is that correct? A. That is right.

Q. Mr. Shane, after you went into the rest room what happened then, if anything? A. Well, he asked me—the man with the glasses said—"I suppose you have insurance?" I said, "No, we don't carry insurance." Then he

said, "Well, it won't hurt you fellows once in a while to have something like this happen".

Q. Did you state anything to him when he said that you had insurance in this matter? A. Yes, I told him, "No, we didn't".

Q. Did you state anything to him about working or being a working man or anything like that? A. I told him we were making a living, that is all.

Q. Well, after he made that remark to you did all three of you remain in the rest room? A. State that again.

Q. Did all three of you remain in the rest room? A. No, the man without the glasses came out.

Q. He came out of the rest room? A. Yes.

Q. Do you know the reason why he left the rest room? A. I don't know. I heard —

Mr. Kinnie: I object, if he don't know.

The Court: All right, if he doesn't know he can't explain it.

Mr. Tracy: Q. You don't know why he left the
13 rest room? A. No, I don't.

Q. You remained in the rest room with the man with the glasses on, is that right? A. That is right.

Mr. Tracy: Will you mark this Plaintiff's Exhibit No. 1 for identification?

(Whereupon, Plaintiff's Exhibit No. 1 was marked for identification.)

Q. Mr. Shane, showing you Plaintiff's Exhibit No. 1 for identification, have you ever seen this particular exhibit before? A. Yes, I have.

Q. What is this item? A. It is what you call a tail pipe support. It is used for holding tail pipes on the rear end of a car.

Q. On December 19, 1957, about the hour of nine o'clock when these men were in your station, did you have occasion to see this particular tail pipe? A. Yes, the man with the glasses had it in his hand in the rest room.

Q. He had it in his hand in the rest room? A. That is right.

Q. What was he doing with it, if anything? A. He was just holding it in his hand while talking to me.

Q. Just holding it? A. That is right. He had a hold of it.

Q. Mr. Shane, you say this is a tail pipe bracket, is that correct? A. Bracket or support, whichever way you
14 want to call it.

Q. On this particular evening do you recall how many of these that you had in your station? A. Yes, there happened to be just two there in the evening because we let the stock run low.

Q. Two before these men come in, is that correct? A. Yes.

Q. And after these men had left the station did you have occasion to check your supply at that time? A. Yes, we checked again because we were trying to find that—the officer and I tried to find it.

Q. How many of these particular brackets did you find? A. Just one left.

Q. And you later found this bracket, is that correct? A. Yes, later found that.

Q. Where did you find it later? A. In the tube lab, where you test the tubes in the bath.

Mr. Tracy: At this time I will offer Plaintiff's Exhibit No. 1 for identification into evidence.

Mr. Kinnie: Your Honor, may I ask one question on voir dire?

Q. You say you found it in the tube bath? A. Yes.

Q. When did you do that? How long after this did you find it? A. Two or three days, something like that. Of course I didn't go digging into the water for it.

Q. Did you see either one of these defendants
15 throw it into the tube bath? A. No, I didn't. I was in the rest room. They went out ahead of me.

Q. Is it possible that that particular exhibit could have been in the tube bath before this happened? A. No, it was unusual.

Q. Not that it was unusual—is it possible it could have been there before December 19th? A. No, I don't think so because there was two there before.

The Court: I didn't gather what he said about this on that particular night.

Q. Did you say that either one of these men had this?
A. Yes, the man with the glasses had that in his hand.
The Court: The exhibit will be admitted.

WHEREUPON, said bracket was admitted in evidence as PLAINTIFF'S EXHIBIT No. 1, and is attached hereto and made a part hereof.

Mr. Tracy: Q. Well, now, Mr. Shane, showing you State's Exhibit No. 1, would you demonstrate to the jury the manner in which you saw the defendant with the glasses with this particular instrument that night? A. He had it like this in his hand talking to me (indicating).
Q. Step down so the Court can see also. A. Just like this, holding it like this (indicating).
Q. Show the jury.
Mr. Kinnie: Wait a minute, Mr. Shane. I want to object to that, if the Court please. The testimony was that
16 this Plaintiff's Exhibit No. 1 was held by one of these defendants after they took Mr. Shane into this rest room and on that ground I am going to object. It is incompetent, irrelevant and immaterial to any of the issues in this particular case.
The Court: Overruled.
Mr. Tracy: Q. Now you may resume the stand. As I understand your testimony, Mr. Shane, the man with the glasses here, who is Keith Haynes, held this instrument in his right hand, is that correct? A. That is right.
The Court: Q. When did you first see it? A. After he took me into the rest room, after he took me in.
Mr. Tracy: Q. What happened then, Mr. Shane, after one of the defendants left the rest room and you were left alone with Mr. Keith Haynes? A. He left too, then.
Q. He left the station also, the rest room? A. Yes, he left at the same time.
Q. What did you do then? A. I come out and just looked around, kind of looked around the station, see, and then the Mrs. comes out, she hollered across the lot at me, and I said, "Did you call the police?" and she said, "Yes, Linda is on the phone now."
The Court: Will you read the last answer?
(Last answer read.)

Mr. Tracy: Q. Mr. Shane, did you ascertain after these men left approximately how much money was taken? A. Well, we make up our daily books, see, and I made
17 it up; I made the book up I think it was the next morning.

Q. How much money was taken? A. We don't count the pennies, so I counted $66.80.

Q. In your report did you say $67.00? A. We don't count our pennies. It will vary three cents.

Q. During the course of time these two men were in your presence in the service station did you observe anything unusual about the men? A. No.

Q. Did they appear to have been drinking? A. No, I didn't notice anything unusual.

Q. How was their speech? A. O. K.

Q. Both their speech was O. K.? A. Yes, they were all right. They didn't have any trouble understanding them. They definitely got across their story.

Q. You knew what they were talking about? A. That is right.

Q. Did you observe the manner in which they walked? A. They were normal; nothing out of the way.

Q. Did you have occasion to smell liquor? A. No, I was in the rest room and I didn't smell it then.

Q. Later in the evening did you have occasion to see either one of these defendants? A. Yes, I did.

Q. Where was that at? A. Down at the police station.

18 Q. You went down to the police station, is that correct? A. Yes.

Q. Approximately what time did you go to the police station? A. Oh, it must have been eleven or 11:30. I don't carry a watch so I don't know. It was getting late. We went to bed and they come and got us.

Q. What was the purpose of going to the police station? A. Identification purposes.

Q. You say for identification? What was done at the police station, if anything. A. They put them in the lineup and we looked through the window.

Q. And that wasn't too long after the incident at Wellesley? A. In approximately two and a half hours, something like that.

Mr. Tracy: Will you mark this Plaintiff's Exhibit No. 2 for identification?

(Whereupon, Plaintiff's Exhibit No. 2 was marked for identification.)

Q. I am showing you Plaintiff's Exhibit No. 2 for identification. Have you ever seen this particular photograph before? A. Yes, I have.

Q. And, Mr. Shane, you state that on December 19th that you were called to the police station to witness a
19 lineup, is that correct? A. That is right.

Q. Showing you again Plaintiff's Exhibit No. 2 for identification, is that a fair representation of the lineup as you saw it at the police station that particular night? A. That is right.

Q. And this is the lineup that you saw, is that correct (indicating)? A. Yes.

Mr. Tracy: If the Court please, I will offer Plaintiff's Exhibit No. 2 for identification into evidence.

Mr. Kinnie: No objection.

The Court: Exhibit 2 is admitted.

WHEREUPON, said picture was admitted in evidence as PLAINTIFF'S EXHIBIT No. 2, and is attached hereto and made a part hereof.

Mr. Tracy: Q. Mr. Shane, at the time you were at the police station and viewed this particular lineup you say through a window? A. That is right.

Q. What were you called upon to do then, if anything? A. Identify the two defendants.

Q. And which particular men out of this lineup did you choose? A. These two here (indicating).

Q. And those—

The Court: That doesn't mean anything for the record.

Mr. Tracy: Q. The men that you chose that particular night in the lineup, are they in the courtroom today, Mr. Shane? A. Yes.

20 Q. Which two men? A. These two here (indicating).

The Court: Q. Which two were they on the photograph so that the record will indicate it?

Mr. Tracy: Q. Which two men? Number them. A. No. 1 and No. 5.

Q. That is looking from the left of the picture? A. That is right.

Q. No. 5 would be the second from the right, to the right of the picture? A. That is right.

The Court: Let me see that now, Mr. Tracy.

(Whereupon, counsel hands photograph to the Court.)

Mr. Tracy: If the Court pleases, I would like to show this photograph to the jury at this time.

The Court: It has not been admitted.

Mr. Tracy: I am very sorry. I will admit it at this time.

Mr. Kinnie: It has been admitted, Your Honor.

The Court: Oh, yes, you had no objection to it. All right, show it to them now and don't ask any questions in the meantime. Just be seated, Mr. Tracy.

(Whereupon, the photograph was passed amongst the jurors.)

Mr. Tracy: Q. Mr. Shane, I might ask you this: At the time you saw these men at the police station was their condition any different than at the time you saw them in the service station? A. No.

Q. Now with reference to the station itself, and
21 I am talking about the outer part—we will call it the office portion of the station—what are the lighting facilities? A. Very good.

Q. What type of lighting do you have? A. I have the eight foot tube light. I have eight of them in there.

Q. Is that a fluorescent light? A. Yes, it is.

Q. For the record again, Mr. Shane, at the time you handed your money over to these men during this holdup was that at your service station on Wellesley and Crestline? A. Yes.

Q. County of Spokane, State of Washington? A. That is right.

Mr. Tracy: You may examine.

Cross-Examination:

* * * * * * * * * *

39 Mr. Kinnie: Q. All right, now it is your testimony, too, I believe Mr. Shane, that neither one of

these men appeared to have been drinking that night? A. Not to anything I could see. I was in the back room with him. I didn't notice anything.

Q. You couldn't smell any odor of liquor or beer or any kind of intoxicant? A. No, everything seemed to be normal.

* * * * * * * * * *

87 JOSEPH E. USHER, called and sworn as a witness in behalf of the plaintiff, testified as follows:

Direct Examination:

By Mr. Tracy:

Q. Officer Usher, would you state your full name, please? A. Joseph E. Usher.

Q. You address? A. 6016 North Assembly.

Q. I have anticipated the next question: What is your occupation? A. Police Officer of the City of Spokane.

Q. Spokane Police Department? A. Yes, sir.

Q. How long have you held that position? A. Little over seven years.

Q. And what are your duties, what do they consist of in the Police Department? A. Uniform Division.

Q. Are you a walking officer or assigned to a prowl car or what? A. At the time I was assigned to a prowl car. I have been doing both.

Q. Are you a married man, Officer? A. Yes, I am.

Q. Do you have any family? A. Yes, I have four children.

Q. Have you ever appeared as a witness in the
88 Superior Court prior to today? A. No.

Q. This is the first time you have appeared as a witness? A. That is correct.

Q. On December 19, 1957 were you on duty that particular day? A. Yes, I was.

Q. Did you have an occasion during the course of those duties to investigate a holdup or reported holdup on Wellesley and Crestline? A. Yes, we had a call.

Q. Did you go to that area? A. We went to the area, yes.

Q. Approximately what time did you arrive, do you recall? A. We probably arrived about 9:25, something like that.

Q. And in your own words now would you tell the Court and jury what you did after you went to the scene? A. Well, we came up Nevada and then headed towards Crestline and then instead of going directly to the scene of the robbery why we headed north from Wellesley approximately four or five blocks west of the robbery scene and then we started searching the vicinity in that area.

Q. Well, now, Officer Usher, up to this point had you ever received any type of description of the men involved? A. Yes, there was a description of a man still at large given over the radio.

89 Q. And what did you do then? You cruised around the area, is that correct? A. We cruised around the area, yes.

Q. What happened then? A. Well, we was going east on one of the avenues, Wabash I believe, and we observed a man walking west on that street, west of the robbery scene also, and when we approached him why he started into a yard and got half way between the house's porch and the sidewalk. We pulled up and stopped and talked to the man. He didn't quite fit the description at the time that we had, which was vague and uncertain. He answered that he lived there. So after talking to him a few minutes we let the man go up to the front door of this house. The man started fumbling with the key on an aluminum storm door and we remained parked on the street and watched the man, and noticing that he was trying to unlock the storm door, and I haven't seen a storm door with a key hole—so he came back from the porch. Shall I continue?

Q. Yes. A. He came back from the porch and he says, "You got me, let's go."

Q. He came up to your car? A. Yes, he came back. So I stepped out of the car and then we opened the door for him and put him in the back seat.

Q. Now, Officer Usher, you have used the word "we". Was another officer with you at the time? A. Yes, Officer Leland Elliott.

Q. Incidentally, at this point, is the man who got in your car that particular night in the courtroom today?

90 A. Yes, he is.

Q. Will you step down from the witness stand and

step in back of the man and point him out, please? A. This man here (indicating).

Q. That is the defendant without the glasses on, is that correct? A. Yes.

Q. You can resume the stand. Well, have you ever learned his name since that time? A. Yes.

Q. Raymond Haynes, is that correct? A. That is correct.

Q. After he got into the car did you have any conversations with this man? A. Yes, I sat in the back seat with Mr. Haynes since the time we put him in the car and until we arrived at the station.

Q. What was the nature of that conversation? A. It was in regard to the robbery.

Q. Did you ask him about the robbery? A. Yes, I did. I asked him about the robbery.

Q. And what did he say, if anything? A. I remember him admitting the robbery.

Q. Admitting the robbery itself? A. Yes.

Q. And at that time was there any mention made of money? A. I don't believe there was.

Q. What did you do then, Officer Usher, after you picked up the man? Where did you take him, if any place?

91 A. We drove by the robbery scene and he admitted that that was the place and then from there we came to the station.

Q. The robbery scene; where did you drive by? A. We drove by the service station.

Q. And where is that located? A. Crestline and Wellesley.

Q. And did this man point out the scene to you? A. I don't recall whether he pointed it out. However, he did recognize the place as the one.

Q. And he admitted that was the place he had robbed? A. Yes.

Q. Approximately how long was this man in your presence, and I am talking from the time you first talked to him? A. He was in my presence for quite some time, because I stayed with the defendant even after we got to the station.

Q. Did you know this gentleman before this particular date? A. No, I didn't.

Q. Had you ever seen him before? A. No.

Q. Do you know the defendant seated here next to him with glasses on? A. I know the man's name, yes.

Q. Did you know it prior to the time of this robbery? A. No.

Q. Well, now, you state that this man, the defendant without the glasses here, Raymond Haynes, was in
92 your presence for quite some time, is that correct? A. Yes.

Q. And, in fact, did you take him yourself to the police station? A. Yes, I did.

Q. Approximately how far is the police station from the location where you apprehended him? A. Oh, four and a half miles, maybe five.

Q. Four to five miles, is that correct? A. Yes, approximately.

Q. Now during that time did you have the opportunity to observe this man as far as talking and walking is concerned? A. Yes, both of them.

Q. Did you notice anything abnormal about the man? A. No, I did not.

Q. Was his speech normal? A. Yes, as I remember.

Q. Readily understandable? A. Yes.

Q. Were his answers to any questions that you propounded to him reasonable and normal? A. Yes, they were.

Q. And how about his walking? A. His walk was good, because we observed him first walking to the house and also back from the house to the prowl car.

Q. Now, Officer Usher, you went to the police station, is that correct? A. That is correct.

93 Q. What happened at that time? A. At the police station why he was questioned by Lieutenant Wakeley and also the effects in his possession were put on the counter in front of him.

Q. That was in your presence, is that correct? A. That is correct.

Q. And this money, you say the effects of his pockets, did that include money? A. Yes, it did include some money.

Q. And who took this money from his pocket?

The Court: Q. What kind of money—cash or currency? A. Currency, paper money.

Mr. Tracy: Q. Did you take that from his pocket yourself? A. Yes, I did.

Q. And Officer Usher, did you count that money? A. Yes, I did.

Q. And do you have it with you today? A. Yes.

Q. Just a second please, after you counted the money what did you do with it at that time? A. We placed it on our property book as evidence.

Q. Did you do that yourself? A. Yes, I did.

Q. Do you have that money in your possession, on your person? A. Yes, I do.

Q. Will you hand it to me? A. Yes.

Mr. Tracy: Will you mark this as Plaintiff's
94 Exhibit No. 5 for identification?

(Whereupon, Plaintiff's Exhibit No. 5 was marked for identification.)

Q. Officer Usher, showing you Plaintiff's Exhibit No. 5 for identification, have you ever seen that particular envelope before? A. Yes. This number I placed on myself.

The Court: Q. Which number? A. This number here (indicating).

Q. Read it. A. 93658.

Mr. Tracy: Q. Is that a property book number? A. Yes, it is.

Q. And is that the envelope in which you placed the currency? A. Yes, it is.

Q. And was that the currency found on the defendant, Raymond Haynes? A. Yes, it is.

Q. And did you count that particular money? A. Yes, I did.

Q. And that money is contained in this envelope, is that correct? A. That is right.

The Court: What was the result of his counting?

Mr. Tracy: Q. What was the result of your counting? A. $67.00 in currency in this envelope.

Mr. Tracy: I will offer Plaintiff's Exhibit No. 5 for indentification into evidence.

The Court: Let counsel examine it.

95 Mr. Kinnie: Might I ask one question on voir dire?

The Court: Yes, and you can open it if you desire, Mr. Kinnie.

Mr. Kinnie: Right.

Q. Now does this contain all the money that was in the possession of this defendant when you searched him? A. That is right.

Q. Was there any silver? A. There might have been a few pennies, but that contained all the currency the defendant had on him.

Q. That includes billfold or any other place he had money, is that correct? This is all the money he had? A. That is all the money he had.

Mr. Kinnie: No objection.

The Court: Exhibit No. 5 is admitted.

WHEREUPON, said currency and envelope is admitted in evidence as PLAINTIFF'S EXHIBIT No. 5, and is attached hereto and made a part hereof.

Mr. Tracy: Q. Officer Usher, showing you the contents of this particular envelope, is this the money you put into this particular envelope? A. Yes, it is.

Q. And it consists of seven five dollar bills, is that correct? A. That is correct.

Q. Two ten dollar bills, is that correct? A. That is correct.

Q. And twelve one dollar bills, is that correct? A. Yes.

Mr. Tracy: I have no further questions.

96 Cross-Examination

By Mr. Kinnie:

Q. Officer, did you find a fifty cent piece on the defendant? A. I don't recall no fifty cent piece.

Q. Did you search the defendant at the scene of the arrest? A. I did not. I searched the defendant at the station.

Q. Would you describe the exact method of how you placed this defendant under arrest? A. I placed him under arrest when he came up to the car.

Q. Did you get out of the car? A. Yes.

Q. You were in the front seat? A. I was in the right-hand side of the prowl car, front seat.

Q. And you got out of the car? A. Yes, I did.

Q. And what did you do? A. I came up to the defendant, alongside him, and walked to the rear of the prowl car and opened the door for him and put him in the back seat.

Q. Did you handcuff him? A. No, I did not.

Q. Did you shake him down at all? A. No, I didn't.

Q. Did you know whether he was armed? A. Only when I arrived at the station.

97 Q. Not until then? A. Not until then.

Q. When you were riding to the station with this defendant, Officer, did you detect any ordor of intoxicating liquor? A. I did not notice any odor.

Q. None, whatsoever? A. No.

Q. On direct examination I believe you stated, referring to your observation of the walking and talking of the defendant, that you saw both of them. Did you say that? A. I saw him both walking and talking.

Q. All right. You did not see the other defendant that night, did you? A. Yes, when he was brought to the station I noticed him. One of the other officers brought him in.

Q. When was he brought to the station? A. Golly, I don't know. He might have been there when I arrived with Raymond.

Q. You don't remember whether he was or not? A. No.

Q. Now what else did you find on this defendant's person when you searched him at the police station? A. Oh, numerous other things. I believe he had a discharge paper with him and I believe he had some payroll check stubs on his person, and it was material that had no connection to the crime as far as we could tell.

Q. Where was the money when you got it from the defendant? A. In his pocket, left side pocket.

98 Q. Pants pocket? A. It was on his left side. I believe it was in the jacket pocket.

Q. Do you remember how the defendant was dressed that night? A. Yes, in a way I do. He had kind of work clothes on that night.

Q. Khakis, if you remember? If you don't, it is all right. A. I can't remember.

Q. This call that you got, where were you when you received the call that something had happened? A. I was at Illinois and Hamilton.

Q. You proceeded immediately to the area, you say? A. Not immediately, no. We was at what I might say was an important intersection in ea-

We hung around that intersection until we received an O. K. to go up into the area.

Q. Then you went up into the area? A. Yes.

Q. When you got into the area, as I understand it, you had received word there was one man still at large? A. Yes, that is right.

Q. That is the one you were looking for? A. Yes.

Q. Had you also received word that he was not armed? A. No, I had not received any word such as that.

Q. Had you received word that there had been a robbery? A. Yes, we had received word that there was a robbery.

99 Q. Have you had occasion to work on other robbery cases, Officer? A. Yes, I have.

Q. Was there something about this man's appearance or his behavior that caused you not to be concerned as to whether he was armed or not? A. Yes, he struck me as being well-mannered and mild. I might say that he was polite, well-mannered and such as that.

Q. And that caused you to feel he was not armed or that you didn't have anything to fear from him? A. In a way it probably had something to do with it, yes.

Q. And you stated you did not handcuff him or shake him down at all? A. Didn't handcuff him or didn't shake him down.

Q. You took him, you stated you took him past this gas station? A. That is right.

Q. That is at Wellesley and Crestline? A. Yes.

Q. What corner? A. Northwest corner.

Q. And when you went by there did you what? Slow down? A. We stopped. However, before we stayed there any length of time at all we was told to bring the man directly to the station, which we did.

Q. Do you remember approximately what time it was that you stopped in front of this gas station?

100 A. It might have been 10:05. I am not positive on the time.

Q. Was the station locked up? A. No, it was not locked up. I never got out of the car.

Q. Were the lights on in the station? A. There were people around the station. The station was; quite a few people were around there. I imagine it was unlocked.

Q. Did you at that time have occasion to make any contact with Mr. and Mrs. Shane or either one of them? A. No, no, because as soon as we got there why we got word to bring the man directly to the station.

Q. So you immediately left? A. Yes, no contact was made.

Q. Now when you first saw this man walking down the street, that was on East Wabash, is that rights? A. I think it was Wabash. There was a street north of Wellesley and we were picking the streets at random.

Q. Did you turn your spotlinght on him? A. Turned the flashlight on him, I believe.

Q. When you first saw him walking? A. When we were alongside him.

Q. When you were close enough? A. Yes.

Q. And you stated at that time he didn't appear to fit the description? A. The description we had was vague.

Q. What was that description? A. Man in work
101 clothes, that was just about the extent of it—work clothes, and they did give his approximate age.

Q. What was the age? A. I couldn't rightly recall that, to be truthful with you.

Q. This man at the time you first saw him had work clothes on, didn't he? A. It was work clothes, but they was neater than what I was expecting to find.

Q. Is that why you at first felt he did not fit the description? A. Yes. It wasn't the clothes, as far as our description on the air came out. It didn't quite fit the description of this man.

Q. In other words, the description that was given to you over the air was not a complete description, is that right? A. Well, the description put on the air, and it was probably just my deduction from what information was given, that I expected dirty work clothes.

Q. What did the description have to say about his height and weight, do you remember? A. Oh, no—five foot nine or something in that relative area, I believe, was the height they used.

Q. Did they have an approximate weight? A. No, I don't think so.

Q. Slight build or heavy build? A. I don't recall.

Q. I will ask you, Officer, whether or not ordinarily a description that you receive over the air is more complete than was the description received in this par-
102 ticular case? A. In some cases, yes, they are more complete.

Q. In other words, this description was an incomplete one? A. Well, from what I can recall of December, the month of December, why they might have had more description put out than I can remember.

Q. Well, if they had, when you saw this man he didn't seem to fit it, when you first saw him? A. When I first saw him.

Mr. Kinnie: No further questions.

Redirect Examination

By Mr. Tracy:

Q. Officer Usher, in any event the man got in the car and admitted the holdup to you, is that correct? A. That is correct.

Q. Then was there any doubt in your mind at that time? A. There was no doubt in my mind that we had the right man.

Q. Officer Usher, at the time you apprehended this man was there any mention made of money when he was in your car? A. There was money taken. I might have asked him if he had the money.

Q. Did he admit having the money at that time? A. No.

Q. And later when you got to the station did he have any comments to make about the money at that time,
103 when you found the money on his person? A. Well, I might say that we talked quite a bit in the back seat of the prowl car and he seemed to be truthful and when we got to the station we found the money and he made the statement to me there. He said, "Well, I guess I did lie about the money".

The Court:

Q. He said what? A. "I have lied about the money".

Q. That was after you found the money? A. Yes.

Mr. Tracy: I have no further questions.

Recross-Examination

By Mr. Kinnie:

Q. In this conversation you had in the back seat of the prowl car did he say anything about drinking? A. Yes, I believe he did say he had some beer.

Q. Was that all, just as a passing remark? A. He said he had some beer and had been drinking.

Q. Did you ask him whether or not he had been drinking? A. No, because I didn't believe it was a factor and as far as my observation was, he wasn't drinking enough that it would be a factor to me.

Q. What else did you talk about in the back of that prowl car? Describe that. How long did it take you to get from where you picked him up down to the station? A. I would say about twenty minutes.

Q. In twenty minutes you had this conversation in the back seat? A. Yes, that is right.

104 Q. What else did you talk about? A. Oh, I found out from him that he was married, had one child, had a brother and his brother and his father were living with him, and the last two of whom came from Minnesota. There were increased living expenses for him.

Q. Did he tell you that his brother and father came from Minnesota? A. Yes, he did tell me, but I can't remember where.

Q. Did he say anything to you about his brother and his father and he had been drinking all that day? A. No, I can't recall that statement. I believe I could state that he said him and his brother was drinking.

Q. Did you ask him how much they had been drinking? A. No, I didn't ask him how much. He might have told me but I can't remember that.

Q. Did he tell you where they had been drinking that day? A. No.

Q. Was there anything else said in the back seat of the prowl car? A. No, I think that just about covers it. There was a lot of conversation going on but it was conversation just to be talking.

Q. Now, Officer, in the back seat of that prowl car on the way to the police station was this defendant crying? A. I think he was.

Q. He was crying? A. Yes.

Q. And have you had experience, Officer, in in-
105 vestigating cases in which a suspect had been drinking? A. Yes.

Q. Have you ever had occasion to run into people who are on what is known as a "crying jag"? A. I think I have.

Q. Did you think this defendant might have been on a crying jag that night on the way to the police station? A. Not from him.

Q. How did you know he was drinking beer? A. He said he had been drinking beer.

Mr. Kinnie: No further questions.

Redirect Examination

By Mr. Tracy:

Q. Officer Usher, now you stated on cross-examination that the man was not crying from beer. You describe in your own words the manner in which this man was acting. A. Well, the man, as far as I am concerned, was crying because he realized the consequences—

Mr. Kinnie: I object, if the Court please. That is a conclusion on the part of this witness.

The Court: I will sustain that.

Mr. Tracy: I have no further questions.

Mr. Kinnie: That is all.

The Court: Step down, Officer.

(Witness excused.)

* * * * * * * * * * *

106 H. DOUGLAS PIKE, called and sworn as a witness in behalf of the plaintiff, testified as follows:

Direct Examination

By Mr. Tracy:

* * * * * * * * * * *

109 Q. That particular evening did you have occasion to see any of the other defendants, the other defendant? A. Yes, I saw the other defendant in the detective office when I got there.

Q. Approximately what time was that? A. That would be about 9:50 or 55.

Q. What was his condition, if you can recall, at the time you saw him? A. Regarding sobriety?

Q. Yes. A. I would say he was sober.

Q. Did you smell the odor of alcohol on this particular defendant? A. No, I didn't talk to him or get close to him myself

Mr. Tracy: I have no further questions.

. . . . . .

110 Cross-Examination

By Mr. Kinnie:

. . . . . .

117 Q. Did you have association at all with the defendant, Raymond Haynes? A. I didn't talk to him, no.

118 Q. You were not close to him? A. Not real close. I was in the same room with him. I saw him in there and was in the next room when the lineup took place.

. . . . . .

120 SHERMAN E. WAKELEY, called and sworn as a witness in behalf of the plaintiff, testified as follows:

Direct Examination

By Mr. Tracy:

Q. Mr. Wakeley, would you state your full name
121 to the Court? A. Sherman E. Wakeley.

Q. Sherman E. Wakeley? A. Right.

Q. What is your address? A. 1125 East Hoffman.

Q. And what type of work do you follow? A. I am Lieutenant in the Police Department,

Q. Spokane City Police Department? A. That is right.

Q. Approximately how long have you been in that particular position, or with the Police Department, I am sorry? A. With the Department?

Q. Yes. A. Over 20 years.

Q. At the present time you are a lieutenant of the Police Department, is that correct? A. That is right.

Q. How long have you been a lieutenant with the Police Department? A. Little over a year.

Q. In your own words, Officer Wakeley, as a lieutenant in the Police Department, what duties does that involve? A. I am in charge of the detective office on the four to midnight shift.

Q. On the four to midnight shift? A. That is right.

Q. And do your duties take you outside of the Police Station itself? A. Very seldom.

122 Q. And you are the officer in charge on that shift, is that correct? A. That is right.

Q. So you would remain ordinarily in the station, is that correct? A. Correct.

Q. Officer Wakeley, on December 19, 1957 were you on duty that particular evening? A. I was.

Q. During the course of the evening did you see either of the defendants seated here at the counsel table? A. Yes, I talked to both of them.

Q. To both of the defendants? A. Yes, both of them.

Q. And do you recall which defendant you talked to first? A. I talked to Raymond Haynes, the one on the left.

Q. Is that the defendant without the glasses? A. That is right.

Q. And you talked to him first, is that correct? A. Correct.

Q. Do you remember approximately what time it was? A. That was probably about ten or after, a little after.

Q. Who brought this man into the station, do you recall that? A. Officer Usher and Elliott, I believe the other man was.

Q. They brought him in, and were you in the room
123 at the time he was brought in? A. They brought him up to the counter and he made a remark about they got him.

Q. They got him? A. Some words to that effect. I don't remember the exact words.

Q. Now you say they got him, in his language, referring to himself. Do you recall how the wording was? A. Well, it was to the effect that he had been caught.

Q. Would you say that in his words rather than in your words? A. In his words?

Q. How would you say it in his words? A. "They have got me," something like that.

Q. What happened after he was brought into the station, then? A. Well, Officer Usher searched him and he found

some money in his pocket—two ten dollar bills and seven five dollar bills and twelve ones. He counted it out and I counted it afterwards and checked the count.

Q. You also counted the money, is that correct? A. That is right.

Q. And did you question Raymond Haynes about a robbery that had taken place at Crestline and Wellesley? A. Yes.

Q. Will you relate in your own words the nature of that conversation? A. I brought him into the interrogating room and questioned him about his name and address, what he had been doing that evening and all day,

124 Q. Officer Wakeley, keep your voice up a little bit so all the jurors can hear you. A. Yes. He told me where he lived, his name, and what he had been doing, he and his brother. He said they had been sitting around the house drinking beer. They went down to a tavern in the evening and drank some more beer and then they drove out looking for a place to hold up. He said he hadn't been working. He had worked for some plumbing outfits, two different ones, early in the fall and hadn't worked since. He was drawing unemployment compensation. He said his brother and his father had come out from the middle west and were living with them and they weren't working. He was financially embarrassed.

Q. Then go ahead, Officer. A. He said they decided to hold up a place so they drove around to find some place that didn't seem to have any customers and they didn't know the streets, didn't know the town very well. They said they were out where they found the car. They drove by and saw a service station which didn't seem to have any business, so they parked the car in the alley and walked into the service station, and Raymond said that he told the man it was a holdup and his brother stood behind the man and he got the money from the service station operator. He didn't think his brother got any of it. After they held up the place they ran out the door and he ran down the side street, not directly toward the car, down around toward the end of the block and come back down the alley and as he was approaching the car he saw a police officer had his brother in custody. So he

turned and ran north about two blocks and then
125 turned and went west about three blocks before a prowl car came along and they stopped and talked to him and asked him where he was going. He said he was going home and he turned and walked up onto a porch. He stood on the porch and he said the prowl car sat out there in the street, didn't move, so he thought well, I might as well give up. So he went back and told them he was the man they were looking for.

Q. Now, Officer Wakeley, at the time you quetsioned this man approximately what time was that, do you recall? A. Ten or shortly after.

Q. Ten or shortly after? A. Yes.

Q. And, Raymond Haynes, did he have any difficulty in relating all these details to you? A. No, he was frank about it. He told me everything.

Q. His recollection of the entire day was fairly good, then? A. Yes, it was.

Q. You were in his presence for quite some time then, is that correct? A. I was.

Q. Did you have an opportunity to observe his speech? A. Yes, his speech was all right.

Q. His speech was all right? A. Yes.

Q. How about, did you have a chance to observe the manner in which he walked? A. Yes, he walked steady and straight. He didn't stagger.

126 Q. Later that evening or at any other time did you have an opportunity to see the other defendant in this action? A. Yes, I talked to Keith Haynes. I had him in another room in the office.

Q. What was the nature of that conversation? A. Well, I started questioning him about his activities. He didn't want to tell me much of anything. He admitted they had been out riding around and had been drinking beer from around noon on at home and went to a tavern and he said they went to another tavern out where the car was parked. He said that is where they had been. That is why they got picked up. He said they went to a tavern in the neighborhood and I knew there was no tavern within almost a mile of where they were.

Q. What part of town do you live? A. I live close to where this robbery occurred?

Q. Do you live in Hillyard? A. No, near Rogers High School. This was near Crestline.

Q. How long have you lived in that particular area? A. I have lived in Hillyard, I was born and raised and grew up in Hillyard.

Q. Approximately how many years have you lived there or how old are you, Officer Wakeley? A. Forty-nine and I was born in this town.

Q. Of your own knowledge what is the closest tavern to that particular location of Crestline and Wellesley? A. The closest tavern is in Hillyard on Market Street, at least three-quarters of a mile.

127 Q. Well, now, at the time you talked to Keith Haynes did he discuss the robbery itself? A. No, he didn't say he was involved in any robbery. I asked him why they were there, why they had their car parked in this alley near the service station. He said there wasn't any place to park it on the street. There is plenty of places to park there.

Q. Approximately how long were you in Keith Haynes' presence? A. I talked to him five or ten minutes, I guess.

Q. Did you have a chance to observe Keith Haynes walking? A. Yes, I did.

Q. And did you have a chance to observe Keith Haynes speaking? A. I did.

Q. And in either his speech or walk did you notice any abnormalities? A. No. They had been drinking but not enough to affect to any degree that I could notice.

Mr. Tracy: I have no further questions.

Cross-Examination

By Mr. Kinnie:

Q. Lieutenant Wakeley, you were talking to Keith Haynes approximately five or ten minutes. Do you remember approximately what time that was? A. That was after I talked to Raymond—probably near 10:30.

Q. And you had been with Raymond Haynes how long? A. Oh, maybe twenty minutes.

128 Q. When you were asking these questions that was in the interrogating room? A. That was.

Q. You were interrogating both suspects? A. I interrogated.

Q. Separately, I mean? You interrogated both of them separately? A. I had Raymond in the interrogating room and Keith was in the other office, right off of the main office.

Q. Who was in the interrogating room with you when you were interrogating Raymond Haynes? A. No one. I was by myself.

Q. All by yourself? A. All by myself.

Q. Did you have a stenographer present? A. No, we had no stenographer on duty at that time of night.

Q. Did Raymond Haynes at any time during that conversation ask permission to make a telephone call to his wife? A. Not during the conversation.

Q. Well, at any time that night? A. He might have asked afterward, after I got through talking to him. He wanted to know if his wife would be notified. I told him we would notify her that he was being held.

Q. Did he ask permission to make a phone call himself to his wife? A. He may have. I don't remember exactly whether he asked or whether we wouldn't notify his wife.

129 Q. Did he say anything to you, Lieutenant Wakeley, if you remember in substance that he wanted to call his wife so that she could get a lawyer? A. No, I don't remember that.

Q. At the time this interrogating took place with Raymond Haynes had he been booked? A. No, he hadn't been booked.

Q. When was he booked? A. After I talked to him and talked to Keith. We made a lineup and took some prisoners from the jail and had the victims from the hold-up come down and view the subjects. He wasn't booked. He was booked for investigation—that is an open charge after the people picked him out of the lineup.

Q. This "booked for investigation," is that what you call a "Small Book" down there? A. That is right.

Q. And you are in charge of the detective force on the four to twelve shift? A. Right.

Q. And when a person is booked for investigation are they allowed to make any telephone calls whatsoever? A. No.

Q. Are they allowed to have any visitor—

Mr. Tracy: If the Court please, I object.

A. No.

Mr. Tracy: Unless there is some materiality.

Mr. Kinnie: I hope to connect it up, if the Court please.

The Court: Well, it could only go to the question
130 of duress.

Mr. Kinnie: Might we approach the bench?

The Court: Yes.

(Whereupon, counsel and the court had a discussion off the record and outside the hearing of the jury.)

(Whereupon, the following proceedings were had within the hearing and presence of the jury.)

The Court: Upon the statement that you will connect it up I will permit him to answer this question. Answer the question. A. No, they were not allowed to have visitors.

Mr. Kinnie:

Q. Are they allowed to have any contact with the outside world? A. No, we don't allow them to use the phone to call out. If some relative wants to contact a lawyer that is their privilege.

Q. That is assuming the relative knew that the party was in custody? A. That is right.

Q. You went off duty about midnight, did you? A. I did.

Q. Had they been booked at that time? A. Yes, he had.

Q. Both of them? A. Both of them.

Q. When you went off duty did you know the whereabouts of the two defendants? A. They were in the City Jail.

Q. Well, I mean were they in jail or were they
131 being interrogated? A. They were in jail, sure, after I went off duty.

Q. You weren't at the police station the next morning, were you? That would be Friday, the 20th of December? A. No, I was not.

Q. You didn't come on until four o'clock that afternoon? A. That is right.

Q. With respect to the conduct, the appearance of the

defendant, Raymond Haynes first, he is the one you talked to for the longest period of time? A. That is right.

Q. Was he crying at all there at the police station? A. No, he wasn't crying in my presence.

Q. Did he appear to have been crying recently? A. Well, I couldn't say as to that. He was very downcast when he was brought into the police station, but as far as having been crying I wouldn't know.

Q. Isn't it a fact that Raymond Haynes, while you were interrogating him, told you he and his brother had been drinking beer all that day downtown? A. No, he said they had been drinking some at home.

Q. And at this interrogating there was no stenographer present? A. No.

Q. And you were all by yourself with the defendant? A. Right.

Q. You were present, though, when Ray Haynes, the defendant, was searched there at the desk? A.

132 When he was first brought into the detective office?

Q. Yes. A. Yes.

Q. That is when they got the money, which is being admitted as Exhibit N. 5, in the property envelope? A. That is right.

Q. That is all the money he had on his person? A. I believe he had a little small change that we had him keep —small change.

Q. Why didn't you put that in? A. He said he had some money of his own.

Q. Did he say none of this was his? A. No, he said that some of it was his. He didn't know exactly how much. He said he had some money before they went and robbed the service station, so we let him keep some of the small change to buy cigarettes. We have a cigarette machine down there at the police station and the trusty buys cigarettes for them.

• • • • • • • • • •

136 Q. Did you talk to these two defendants the next day at any time at all? A. No, I didn't.

Q. Did you talk to them at any time since the 19th? A. No, I have not.

137 Q. Just that one time? A. Just that one time.

Q. Lieutenant Wakeley, when you were talking to

Raymond Haynes what was his physical appearance with respect to being excited or nervous? A. Well, he was nervous all right.

Q. Was he excited also? A. Well, I wouldn't say he was too excited but naturally under the circumstance he is not going to be dead calm.

Q. Was he belligerent? A. No.

Q. Was Keith Haynes belligerent? A. Keith was, yes. He was a little belligerent. He said I didn't know what I was talking about when I started questioning him about this robbery up there. He said he had been to a tavern but he couldn't say where the tavern was. He was very vague how far it was away or the direction it was or anything else.

Q. And that is what you base your conclusion upon that he was belligerent? A. He was more belligerent than Raymond. He wasn't exactly what I would call belligerent. He didn't get belligerent in the sense of the word, but he wasn't as near cooperative as Raymond was.

Q. And did Keith tell you when you were talking to him for the five or ten minutes that he and his brother and his dad had been drinking beer that day downtown? A. Yes, he said he had been drinking downtown, also at home.

138 Q. And what did Raymond tell you in that regard?

A. Raymond said the same thing, they had been drinking at home, been downtown earlier, went home and drank a little more and came downtown to a tavern.

Q. What tavern did they go to downtown? A. I believe it was a tavern somewhere near Main and Washington or Stevens.

Q. Could it have been the Gay Tavern? A. Gay Tavern, I think it was. They were all in the same neighborhood there.

Q. Did he say anything about whether he had been drinking the day before? A. I didn't ask him about that. I don't recall his mentioning it.

Q. Where did you observe first Raymond Haynes walking? A. When he came into the police station.

Q. Where were you? A. When they walked him back to the interrogating room.

Q. Where is the interrogating room from your desk in the detective office? A. It sits back in the southwest corner of the detective office.

Q. You go down that long corridor past the individual offices? A. There are three offices on the south side of the detective office and the last one is a soundproof room.

Q. Did he walk by himself? A. No, he was escorted by Officer Usher, I believe, and maybe Detective Pike and Obde came in, too.

139 Q. Were they holding onto the defendant, Raymond Haynes, when he was walking down there? A. Not that I noticed.

Q. You at that time—that was the first time you had ever seen this defendant, isn't that correct? A. When they brought him into the office.

Q. And you made a special point to look at him and examine his method or manner of walking closely? A. Yes, I could see him plain.

Q. You made a special point of it? A. Well, naturally I looked at his condition, looked him over.

Q. What was there in his condtion that caused you to pay more or special attention to this defendant? A. There was nothing more. He wasn't drunk, although I could smell liquor when I got up close enough to him.

Q. When did you first smell liquor? A. I don't believe I smelled it until I got him back in the interrogating room, because of the counter between us while we were in the main part of the detective office.

Q. Then, at the time you— A. I believe I was probably four feet away from him at that time.

Q. At the time you watched him walk you had not smelled any liquor then? A. No, but I saw him afterwards. We had him stand up in the lineup and he had to walk up there, and the people come down to look at him.

Q. Did you perform any kind of chemical tests on
140 that defendant? A. No.

Q. Did you ask him to walk a straight line? A. No.

Q. Or perform any of the other tests? A. No, I didn't suspect that he was drunk so I had no reason.

Q. He wasn't crying at that time? A. No, I didn't notice him crying.

Q. Now with respect to the defendant, Keith Haynes, when did you see him walk? A. He was sitting down in the office, the other part of the office, when I came in to

talk to him. I saw him walk after we got out and took him around to the interrogating room for the people to view him in the lineup.

Q. What time did they bring Keith Haynes in, do you know? A. I don't know the exact time they brought him in.

Q. With respect to the time they brought Raymond Haynes in? A. I believe they brought Keith in shortly after I was talking to Raymond, back in the interrogating room.

Q. Raymond was brought in first? A. Yes, he was brought in by one prowl car and I believe Detective Pike and Obde may have brought Keith in. Like I say, I was not in the office. I was back in the interrogating room with Raymond Haynes when Keith was brought in.

Q. Was there anything in the method or manner in which Keith Haynes walked that night that caused you to
141 pay any special attention to his walk? A. No.

Q. That was the first time? A. He didn't appear to be drunk. I talked to him before I saw him walking.

Q. You had not seen him before that night? A. No, I had not.

Mr. Kinnie: No further questions at this time, if the Court please, but I would request that this witness be kept on call.

The Court: Very well.

Mr. Tracy: What time do you go back on shift, Officer Wakeley? A. It is quarter to four. I usually am down before 3:30.

Mr. Tracy: I would assume that the witness could return home?

Mr. Kinnie: I don't mean by asking you to remain on call you should stay in the courthouse. All I mean is that you are still under subpoena.

Mr. Tracy: I have no further questions.

(Witness temporarily excused.)

The Court: We will adjourn until two o'clock.

(Whereupon, the trial in the above case was recessed until two o'clock p. m. of the same day.)

142 2:00 o'clock, p.m.,
Thursday,
March 20, 1958.

(Whereupon, the trial in the instant case was resumed pursuant to the noon recess.)

The Court: You may proceed.

Mr. Tracy: I will call Harry Cockburn.

HARRY H. COCKBURN, called and sworn as a witness in behalf of the plaintiff, testified as follows:

Direct Examination

By Mr. Tracy:

Q. Mr. Cockburn, would you state your full name to the Court and jury, please? A. Harry H. Cockburn.

Q. Your address, Mr. Cockburn? A. East 1117 Courtland Avenue, Spokane, Washington.

Q. You are a married man? A. Yes, sir.

Q. And do you have any children? A. Two children.

Q. Approximately how long have you been in and about Spokane, Washington? A. Forty-two years.

Q. All your life? A. Yes, sir.

Q. Mr. Cockburn, what occupation do you hold? A. Police Officer for the City of Spokane, assigned to the Plain Clothes Division.

Q. You are a detective in the Spokane Police De-
143 partment? A. Yes.

Q. How long have you been in that position? A. Sixteen years July 19th this year.

Q. Officer Cockburn, on December 20, 1957 were you on duty that particular day? A. I was.

Q. And during the course of that day did you have occasion to see Keith and Raymond Haynes, the defendants in this action? A. I did.

Q. Are those two gentlemen in the courtroom today? A. They are.

Q. Will you point them out? A. Raymond Haynes is the third man from my left and Keith is the man next to him wearing the glasses.

Q. Raymond Haynes is immediately to the right of the defendant with the glasses, is that right? A. That is right.

Q. Officer Cockburn, did you have occasion to have a conversation with either of these men or both of them? A. I did, both of them.

Q. With whom did you converse first, do you recall? A. As I recall, it was Raymond Haynes first.

Q. In your own words would you relate the nature of that conversation to the Court and jury? A. That particular morning I was assigned to follow up on the case in which Raymond and Keith Haynes were being held in custody. Raymond Haynes was brought down to the detective office and Detective Peck and myself interrogated him at that time.

144 Q. What was the result of that interrogation? What was related during the course of that interrogation? A. Their activities for the day before.

Q. And would you relate those to the jury and the Court, please? A. I talked to Raymond first and it was that he took his wife to work before noon, and from there he and his father and his brother Keith went to the Gay Tavern. There they stayed until approximately 1:30 that afternoon.

Q. You are speaking about the 19th of December, the day before? A. On the 19th, the day before, yes, sir.

Q. Continue. A. Approximately 1:30 they left the tavern and went and picked up Mr. Raymond Haynes' daughter at the baby sitter's and returned to Raymond's house.

The Court: A little louder please, Officer.

The Witness: They returned to Raymond's house and left the daughter and their father to take care of the children and returned back to the Gay Tavern, where they stayed until approximately 8:00 o'clock, at which time they left and went in the car owned and driven by Raymond Haynes.

Q. Go ahead. A. While in the car they drove to the northern part of town and discussed their financial status and eventually decided that they would pull a holdup. They wound up at the service station on Wellesley and Crestline and parked the car in the alley close to the station and both entered the station at the same time.

145 Q. Continue. A. In the station Raymond did most of the talking. He asked the proprietor for a location of a certain street and then asked for change for a fifty cent piece. At this time the proprietor went to make

change and he was advised at that time that it was a stick-up.

Q. This is the story, as we are going along here, related to you by the defendant, Raymond Haynes, is that correct? A. That is correct.

Q. Continue and a little louder. A. The service station attendant had opened the cash register and Mr. Haynes. Raymond Haynes, asked for all the money and all the loot, and the money was, in turn, given to him. At this time Keith—

Mr. Kinnie: Just a minute. At this time might I ask a question on voir dire?

The Court: You can't cross-examine.

Mr. Kinnie: No. I wish to inquire whether Keith was present. If he wasn't, these statements were made and I would like to get an objection in the record.

The Court: All right.

Voir Dire Examination

By Mr. Kinnie:

Q. Officer, was Keith Haynes present during this interrogation of Raymond Haynes? A. No, sir.

Mr. Kinnie: Then, if Your Honor please, I would object to any statements made by Raymond involving Keith, made out of his presence.

146 The Court: That objection will be sustained as far as Keith is concerned, but the confession is admissible against the one making it. I will so instruct the jury, in any event.

Mr. Kinnie: Yes.

Mr. Tracy:

Q. Officer Cockburn, leaving out any references to the defendant Keith, would you relate the remainder of the story as told to you by Raymond? A. The man was ordered to another room adjacent to this particular room in the station and that Keith was standing behind the man during this time.

Mr. Tracy: Well, if the Court please, I can see difficulties here in the Officer relating the testimony.

Q. At this time I might ask you, Officer Cockburn,

did you later talk to Keith Haynes, the other defendant in this action? A. Yes.

Q. Did he relate a similar story to you? A. Yes, sir.

Mr. Tracy: Now, if the Court pleases, I can have him relate this back and forth, if that is what counsel wants.

The Court: You go to the one defendant first and then go to the other.

Mr. Tracy:

Q. If you can, Officer Cockburn, as closely as possible restrict this particular story to what Raymond Haynes himself told you and try to eliminate reference to Keith Haynes, the other defendant.

The Court: Eliminate any references to what Keith said.

147 Mr. Tracy:

Q. Yes, to what Keith said. A. About the time they had the station attendant in the other room a lady come in and conversed with Mr. Raymond Haynes, asking about her husband.

Q. Then what was related? A. At this time the two men immediately left the station.

Q. Now, Officer Cockburn, did you also have the opportunity to discuss this particular robbery with Keith Haynes? A. I did.

Q. Relate to the jury what Keith Haynes told you and again leave out of that particular story anything that Raymond Haynes may have said.

The Court: Has he completed everything with respect to Raymond Haynes now?

Mr. Tracy:

Q. Does that complete the story as far as Raymond Haynes is concerned? A. No, sir.

Q. All right, fine; go ahead. A. Upon leaving the store Raymond Haynes ran up the street and then cut through between the houses towards the alley and while in the alley he observed a police officer apprehend his brother. He stayed there for a few minutes and then proceeded along, intending to go to Division Street and on his way there a prowl car officer stopped him and talked to him or questioned him about seeing another

man, at which time he left them and went up to a house and pretended to live there. The officers in the car did not leave so he returned to them and advised him he
148 might as well ride with them and go downtown.

Q. Does that complete the story as for as Raymond Haynes is concerned? A. I believe so.

Q. Mr. Cockburn, you also had an opportunity to talk to Keith Haynes? A. Yes, sir.

Q. Relate to the Court and jury what Keith Haynes related to you. A. The following morning, December 19th, at approximately 8:30 they took Mrs. Haynes, Mrs Raymond Haynes, to work and that then Mr. Haynes, her father, and Raymond and he went to a tavern, where they stayed until around 1:30. They left and went and picked up the baby at the baby sitter's and went to their home and then went back to town and went to a meat locker and then returned home where they left their father and the small child. They returned to the tavern where they stayed until sometime around eight o'clock, and left the tavern and while in the car they discussed pulling a bluff on a service station, a station that didn't have any customers; that they located this one station. They parked the car in the alley and that they both entered the station together. The service station attendant was advised it was a stickup and that after the money was received Keith ordered the man to the back room or another room.

Q. Did Keith Haynes relate to you what he was doing at the time at the service station? A. That he was standing behind him and that at one time he put his finger or knuckle into the man's back.

149 Q. Go on from there. A. After the lady came in the station they both left immediately. Keith became mixed up in his directions and running up Crestline, fell, and upon coming to his feet did not see his brother Ray any more. Then he circled up the block and came through the alley, and as he approached the car he saw somebody standing by it, thinking it was his brother, which turned out to be a police officer.

Q. Is that substantially it? A. Yes, sir.

Mr. Tracy: I have no further questions.

Cross-Examination

By Mr. Kinnie:

Q. Well, Officer, did Keith, when you were interrogating Keith didn't he tell you that when he was in this alley and looked towards the car that he saw this officer standing behind some bushes? A. I don't remember him saying anything about any bushes.

Q. He said that the officer was by the car? A. He said somebody was by the car and he thought it was his brother.

Q. What time of the day did this interrogation take place, Officer, approximately? A. Oh,—Raymond Haynes? 9:30 to ten o'clock, the start of it.

Q. I should have pinpointed Raymond Haynes, first. What time did you talk to him? A. Probably around 9:30, to the best of my knowledge.

Q. And how long did you talk to him? A. Well, at that time I talked to him and then we took his statement. You mean altogether?

Q. Yes. A. Oh, approximately an hour and a half to two hours.

Q. It would have been pretty close to noon when you finished with Raymond Haynes, is that right? A. It was before noon, sir.

Q. You stated that they brought Raymond Haynes down. Where was Raymond Haynes? A. In the City jail.

Q. And do you know, was he booked in the City jail? A. He was being held, yes, sir.

Q. Do you know whether or not he was booked? A. To be booked under an investigation.

Q. That is the Small Book? A. Yes, sir.

Mr. Tracy: If the Court please, I believe the question was does this witness know if he was booked, is that correct?

Mr. Kinnie: Yes.

Mr. Tracy: I don't think the answer is responsive to the question. I don't know if the witness understood the question or not.

Mr. Kinnie:

Q. I will ask you again, Officer: Do you know whether or not Raymond Haynes was booked in the City jail? A. I know he was booked under the Small Book.

Q. Now at 9:30 in the morning of December 20th, was the first time you had occasion to talk to Raymond
151 Haynes? A. To my best recollection, that was the first time I ever saw him.

Q. During that conversation, Officer, did he ask permission from you to make a telephone call to his wife? A. I don't remember him asking me.

Q. Could he have asked permission to make a telephone call? A. He could have.

Q. You just don't remember? A. I don't remember him asking me.

Q. While you were interrogating the defendant, Raymond Haynes, did he make a statement to you in substance and effect that he would make a statement or would tell you what you wanted to know if you would let him make a phone call to his wife? A. I don't remember.

Q. At the time you were interrogating the defendant, Raymond Haynes, did you make a statement to him; in effect, that you can't make a phone call until we get a statement? A. I don't remember making any such statement.

Q. Now you stated that the defendant, Raymond Haynes, told you they had been drinking the day before on the 19th? A. Yes, sir.

Q. Starting in the morning? A. Yes.

Q. Carrying through the entire day, with the exception of the noon hour, 1:30 or so? A. Yes, sir.

Q. And on until 8:00 o'clock in the evening? A.
152 Yes, sir.

Q. And did you ask them how much they had to drink that day—Raymond Haynes—did you ask Raymond Haynes how much he had to drink that day? A. I did.

Q. What did he tell you? A. That he was drinking bottles of beer, approximately twelve I believe. It was twelve to fourteen.

Q. Isn't it a fact, Officer, that he told you he had had about a case of beer to drink that day—strike that. Isn't it a fact that the defendant, Raymond Haynes, told you in response to your questions that he had had about a case of beer to drink on December 19th? A. I don't remember him saying that.

Q. Isn't it a fact that at the interrogation, following that statement, that you laughed at him and said, "No one

would believe that." A. I don't recall that from him at any time.

Q. Laughing at him at anytime? A. No, sir.

Q. In any event, Officer Cockburn, when prisoners are booked on what you term a "Small Book" are they allowed any telephone calls? A. No, sir.

Q. There is no hesitation in your answer, is there? A. No, sir.

Q. And are they allowed any visitors? A. They are allowed attorneys, if an attorney comes to see them.

Q. Are they allowed to call an attorney? A. That
153 I don't know.

Q. If they are not allowed a telephone call they would have a pretty hard time calling someone? A. My understandinig is they are not allowed to make telephone calls. Now whether there is an exception in calling an attorney I do not know. However, I do know if an attorney does come to see an individual being held, that is their right and privilege.

Q. Are you acquainted with Mrs. Esther Haynes, the wife of the defendant, Raymond Haynes? A. Well, I might be acquainted with her from talking to both Raymond and Keith. I have seen Mrs. Haynes prior to that time. I understand she works in the Kress Store and and that may be where I saw her.

Q. Did you see Mrs. Haynes at the Police Station on the morning of December 20th? A. I believe I did.

Q. Did you at that time inform Mrs. Haynes that she could see her husband if she wanted to? A. I did not.

Q. Shortly before noon or when was it that you were through with Raymond Haynes? Was it 11:30 or 11:00? A. I don't know for sure. I talked to him the best I can recall—my recollection is two hours or an hour and a half, something like that.

Q. Would eleven o'clock be an exact figure? A. It would be close.

Q. From eleven o'clock on did you have any other conversation with the defendant, Raymond Haynes? A. I talked to him that afternoon, at which time both
154 he and Keith were brought over to the prosecuting attorney's office.

Q. And that was after they had given a statement to you

in the police station and they had signed it, is that correct? A. No, sir, the statements were not signed at that time.

Q. When were the statements signed? A. As I recall it, Raymond signed his statement that afternoon in the prosecuting attorney's office and it was notarized by Deputy Prosecuting Attorney Gray.

Q. Mr. Gray, the deputy prosecuting attorney, did not notarize the signature over in the City jail, is that correct? A. That is correct.

Q. Isn't it a fact, Officer, it was not until after they had signed these statements that they were officially booked on a charge of robbery? If you know, if you don't know, say so. A. Raymond signed his before that time.

Q. Raymond signed his before he was officially booked? A. On the charge of robbery.

Q. Now as to Keith Haynes, where was he with relation to Raymond Haynes at the time you were interrogating Raymond Haynes? A. If I recall, Raymond Haynes was back up on the second floor in the men's jail at the time.

Q. When you were finished with Raymond Haynes did you then call for Keith Haynes? A. That is right.

155 Q. What time did you start talking to him? A. I imagine sometime around eleven o'clock, maybe before. I don't know for sure.

Q. How long did you talk to Keith Haynes? A. Oh, probably on hour, little over.

Q. And while you were talking to Keith Haynes was a stenographer typing up the statement of Raymond Haynes? A. She typed up a statement, yes, sir. She took a statement. I talked to him a few minutes prior to taking the statement and then a stenographer was called in and a statement was taken.

Q. I mean while you were interrogating Keith Haynes was a stenographer typing up the statement that had been given earlier by Raymond Haynes? A. She could have been typing it.

Q. Isn't it a fact that either she or you or Officer Peck would bring in a typewritten sheet of paper and hand it to the defendant, Keith Haynes, and say, "This is your

brother's statement. Read it." A. As I recall, Keith asked to see his brother's statement. I am not sure.

Q. Isn't it a fact that is the way he saw it, page by page, as it came off the typewriter? A. I think so.

Q. Before it was signed or anything? A. Yes, sir.

Q. And without talking to Raymond Haynes? A. That is right.

156 Q. Did Keith Haynes ask permission of you to make a telephone call during this interrogation? A. I don't recall him asking permission.

Q. Did Keith Haynes say to you, in effect, that he would make a statement and tell you what you wanted to know if you would let him call a lawyer? A. I don't recall that.

Q. Did you ask Keith Haynes how much he had been drinking the day before? A. Yes, sir.

Q. What did he tell you? A. As I recall, probably ten to twelve bottles of beer.

Q. And they told you they had been drinking in the Gay Tavern, starting around 8:30 or 9:00 o'clock in the morning. A. Raymond said before noon. Keith said somewhere around 8:30.

Q. Did you ask them how much beer they were consuming per hour or anything like that? A. I don't recall.

Q. Weren't you concerned at all about the amount of beer they had that day? A. I asked them how much they had.

Q. You have been a police officer a little over—it will be 16 years in July? A. Yes, sir.

Q. In that time, Officer, have you had occasion to investigate other cases involving people who had used intoxicating liquors? A. Yes, sir.

157 Q. And cases in which you were investigating and people were under the influence of intoxicating liquor? A. Yes, sir.

Q. And you have done that on many occasions? A. Yes, sir.

Q. In your opinion, Officer, would twelve to fourteen beers, taken over an eight hour period, would that be sufficient—

Mr. Tracy: Objection.

The Court: Sustained.

Mr. Kinnie: No further questions.
Mr. Tracy: I have nothing further.

(Witness Excused.)

DOROTHY JEANES, called and sworn as a witness in behalf of the plaintiff, testified as follows:

Direct Examination

By Mr. Tracy:

Q. Mrs. Jeanes, would you please state your full name to the Court and jury? A. Dorothy Jeanes.

Q. And what is your address, Mrs. Jeanes? A. 3813 North Atlantic.

Q. Mrs. Jeanes, where are you employed at the present time? A. The Spokane Police Department.

Q. What is your occupation? A. Stenographer.

Q. Approximately how long have you been with
158 the Spokane Police Department? A. Six years.

Q. And what are your duties there? A. Outside of my stenographic duties I take statements from people who come in the Department and transcribe them.

Q. Mrs. Jeanes, I will ask you this: On December 20, 1957, were you present at a conversation between, take first, Raymond LeRoy Haynes and Detective Peck and Detective Cockburn? A. Yes, I was.

Q. And during the course of that conversation did you take shorthand notes of the conversation? A. Yes.

Q. And do you have those shorthand notes with you today? A. Yes, I do.

Q. And did you later take the shorthand notes of the conversation with Raymond LeRoy Haynes and transcribe them into statement form? A. Yes, I did.

Mr. Tracy: I think perhaps for convenience I will go into the other statement and have them both marked at the same time, if the Court please, or we can take them one at a time.

The Court: You have the rule in mind as to their admissibility.

Mr. Tracy: Yes.

The Court: Is this a complete statement so it amounts to a confession under that rule?

159 Mr. Tracy: Yes.

The Court: I would take them one at a time.

Mr. Tracy: Will you mark this Plaintiff's Exhibit No. 6 for identification?

(Whereupon, Plaintiff's Exhibit No. 6 was marked for identification.)

Q. Mrs. Jeanes, showing you Plaintiff's Exhibit No. 6 for identification, have you ever seen that exhibit before? A. Yes.

Q. And what is that? A. That is a statement of Raymond LeRoy Haynes.

Q. Mrs. Jeanes, at my request did you compare Plaintiff's Exhibit for identification No. 6 to your shorthand notes? A. Yes, I did.

Q. Is that an exact transcription of those notes? A. Yes, with one exception. On Page 6 the fifth answer the defendant, Raymond Haynes, had substituted the word "Division" for the word "tavern", and my notes definitely read "tavern".

The Court:

Q. "Division" for what? A. "Division" for "tavern".

Mr. Tracy:

Q. Your notes show "tavern" and there has been a change in that statement by the defendant, is that correct? A. Yes, he corrected it. I was not present when he made that correction.

The Court: Do you want to offer that first?

Mr. Tracy: No, they are both notarized statements if the Court please. I am not offering them at this

160 time. I will call the notaries to offer them.

Will you mark this Plaintiff's Exhibit No. 7 for identification?

(Whereupon, Plaintiff's Exhibit No. 7 was marked for identification.)

Q. Mrs. Jeanes, showing you Plaintiff's Exhibit No. 7 for identification, have you ever seen this instrument

before? A. Yes, that is a statement of Keith Edward Haynes.

Q. Did you prepare this particular statement from your shorthand notes? A. Yes, I did.

Q. And at my request, Mrs Jeanes, did you compare this statement against your shorthand notes? A. Yes.

Q. And is it an exact transcription of those notes? A. Yes, it is.

Mr. Tracy: I have no further questions.

Cross-Examination

By Mr. Kinnie:

Q. Mrs. Jeanes, on December 20th when you took the shorthand notes of that—what was this, an interrogation? A. No, it was the statement, it was taken of the two defendants.

Q. Who was present? A. Detective Peck and Detective Cockburn.

Q. And the defendant? A. And the defendant, yes.

Q. You took them separately? A. Yes.

161 Q. Were you in the interrogation room when the detectives were interrogating the defendant, Raymond Haynes, just before they took the statement? A. No, I was not.

Q. Do you of your own knowledge know that there was an interrogation that took place just before they called you in to take the statement? A. Yes.

Q. And your notes, of course, would not reflect anything that happened during that interrogation? A. No, they would not.

Q. Would your notes reflect everything that took place while you were in the room? A. Yes.

Q. Every spoken word? A. Yes, they would.

Q. Now, with respect to the defendant, Keith Haynes, did you or do you of your own knowledge know that there was interrogation of Keith Haynes immediately prior to calling you in to take a statement? A. Yes.

Q. And you were not present for that? A. No.

Q. And your notes or these exhibits would not reflect anything that happened or anything that was said during this interrogation? A. No, they would not.

Q. And these statements are in question and answer form, are they? A. Yes, they are.

162 Q. With respect to Plaintiff's Exhibit No. 6, the statement of Raymond Haynes,— A. Yes.

Q. —how many pages is that?

The Court: Typewritten or in her notebook?

Mr. Kinnie:

Q. Typewritten, do you remember? A. I believe there are eight.

Q. And how long would eight typewritten pages represent in time? Is there any way of telling that? A. Yes, you mean in actually taking the statement?

Q. Yes. A. About fifteen minutes; in fact, that was the time. One statement was taken at 10:45 and the second one at 11:00.

Q. Raymond Haynes was taken, the whole thing was taken in fifteen minutes? A. Yes.

* * * * * * * * * * *

167 CARROLL D. GRAY, called and sworn as a witness in behalf of the plaintiff, testified as follows:

Direct Examination

By Mr. Tracy:

Q. Mr. Gray, would you state your full name to the Court and jury, please? A. Carroll D. Gray.

Q. What is your address? A. 4918 North Walnut.

Q. What is your occupation, Mr. Gray? A. I am a deputy prosecutor.

Q. Spokane County, is that correct? A. Spokane County.

Q. Mr. Gray, are you also a notary public in the State of Washington? A. Yes, I am.

Q. On December 20, 1957 were you a notary public on that particular date? A. Yes.

Q. On that date, Mr. Gray, did you have occasion to see Raymond LeRoy Haynes, one of the defendants in this action? A. I don't recall the exact date. I did see him, yes.

Q. Would you point him out, the person that you saw? A. Raymond Haynes is seated, nearest of the two defendants, nearest to Mr. Kinnie, on my left.

Q. Is that the defendant with or without the glasses? A. The defendant without the glasses is Ray and
168 with the glasses is Keith.

Q. At the time that you saw this particular defendant, did he sign a document in your presence? A. Yes, he did.

Q. Mr. Gray, showing you Plaintiff's Exhibit No. 6 for identification, have you ever seen this particular exhibit before? A. Yes, I have.

Q. In showing you a signature that appears here would you read that signature? A. "Carroll D. Gray, Notary Public in and for the State of Washington, residing in Spokane."

Q. Is that your signature? A. Yes, it is.

Q. And this signature that appears here, read that please. A. Raymond L. Haynes.

Q. And was this particular document signed in your presence by Raymond Haynes? A. Yes, it was, on the 20th of December.

Q. And did you affix a seal to this particular instrument? A. I don't know if I did affix my seal. No, I didn't affix the seal.

Q. Was anybody else present at the time that this instrument was signed? A. Detective Harry Cockburn was there, yes.

Q. And did Detective Harry Cockburn sign also this instrument in your presence as a witness? A. Yes, he did.

169 Q. Does that signature appear on the last page of the instrument? A. It does.

Q. Was there any particular formality you went through, Mr. Gray, at the time this instrument was executed? A. Yes, I asked Mr. Raymond Haynes whether he had read the complete statement and he said that he had. I asked him if he had made certain changes in the instrument and he said he had on certain pages and that he had initialed those changes. He stated that he read each page, initialed each page. I asked him if the whole statement was the truth and he said that it was and I asked him if he would swear to that and he did and he signed it in my presence.

Mr. Tracy: At this time I offer into evidence Plaintiff's Exhibit No. 6.

Mr. Kinnie: I would make the same objection and ask the Court to reserve ruling.

The Court: All right, I will withhold ruling until we have had a chance to confer in chambers.

Mr. Tracy: I have no further questions.

Cross-Examination

By Mr. Kinnie:

Q. Mr. Gray, where was this instrument signed? A. It was signed in my office on the third floor in this building.

Q. It was not signed at the jail? A. No, it was not. At the time the instrument was brought to me it was unsigned.

Mr. Kinnie: No further questions.

Mr. Tracy: That is all.

170 The Court: Step down.

(Witness Excused.)

Mr. Tracy: If the Court please, at this time the State rests.

The Court: You had better wait on resting until we have a chance to dispose of the objections to the two exhibits. Otherwise, you are resting?

Mr. Tracy: Yes.

The Court: Well, I think we will have to take about a twenty minute recess on this, Mr. Aldrich.

(Whereupon, a recess was taken and the following proceedings were had between counsel and the Court in chambers.)

Mr. Kinnie: This is Plaintiff's Exhibit No. 6 for identification, the purported statement of Raymond LeRoy Haynes. On behalf of the defendant, both defendants, I object to the statement "Armed Robbery", appearing on Page 1 in the upper righthand corner.

The Court: That will be deleted.

Mr. Kinnie: On behal the defendant, Keith Haynes, I object to the following questions and answers contained in Plaintiff's—

The Court: That is Ray's statement. I am instructing the jury that this is not admissible against Keith. As far as Ray is concerned, what do you have?

Mr. Kinnie: I object on behalf of Raymond Haynes to Plaintiff's Exhibit No. 6, to its being admitted as a confession, upon the ground that it is not a confession in that it does not contain a clear and unequivocal expression of guilt or confession of facts indicating guilt; that
171 instead this exhibit contains exculpatory statements.

The Court: Will you point out what exculpatory statements you have in mind?

Mr. Kinnie: All right, on Page 3 of Raymond Haynes' statement after a series of questions to the effect, "Did you talk about holding up a place," after he left the tavern:

> "Q. After you got into the car when you left the tavern, did you talk about holding up a place at that time?
> "A. Apparently we did.
> "Q. Did you talk about hold up a service station?
> "A. We presumably did.
> "Q. And to get one that wasn't very busy?
> "A. Yes."

I object to those. I point them out as exculpatory statements and not being a clear indication of guilt or confession of guilt.

Further, on Page 6, the bottom of the page:

> "Q. Did you tell them that you were one of the men in the holdup?
> "A. No."

And the following questions on the top of page 7:

> "Q. Do you remember telling the police officers, 'Let's go—You got me!'
> "A. No. No, it seems that I said, 'I might as well go down town with you.'
> "Q. You didn't say why?
> "A. I don't remember—I was feeling pretty low—high and low, at the same time.
> 172 "Q. Did the police officers ask you why you should ride down town with them?
> "A. I don't know—they just assumed that I was the one they wanted—I really don't know."

Now I further object to Plaintiff's Exhibit No. 6 upon the ground that if it is a confession at all it is a confession to the crime of larceny and not to a crime of robbery, in that there is no showing in the confession of any force or violence used or exercised by the defendant, Raymond Haynes, at the time of obtaining the money nor is there any showing in the exhibit itself or any statement in the exhibit itself showing that the prosecuting witness Mr. Shane was in any way placed in fear of immediate bodily injury and without these elements, either force or violence or fear exercised upon the complaining witness at the time of obtaining the money the crime of robbery is not established, and if the facts are not contained in the purported confession then it is not a confession and I object to it on that ground.

For the record, too, I wish to object to the admission of Exhibit No. 6 upon the ground that it violates the defendant, Raymond Haynes' rights under the constitution with regard to self-incrimination and forces him to take the witness stand against himself and against his will.

I further object to Exhibit No. 6 upon the ground it is a violation of Rule 9 of the Court Rules of Washington, of Pleading, Practice and Procedure, providing that pleadings and depositions are not allowed to go to the jury
173 room, that this statement, if it is admitted and allowed to go to the jury room, would, in effect, allow the deposition to go to the jury room.

The Court: All right, I don't find in here any of the exculpatory statements that you refer to upon reading the whole instrument. Here is what he expressly testified to:

"Q. Both you and Keith together?

"A. Yes.

"Q. Then, what happened?

"A. I asked the operator for four-bits change. When he opened the 'till', I told him, 'This is a stick-up, and to give us the loot and money,' and he did.

"Q. To whom did he give the money to?

"A. To me.

"Q. Was that currency?

"A. Yes.

"Q. What did you do with the money?
"A. I put it in my left coat pocket.
"Q. Where was Keith at this time?
"A. In the station.
"Q. What was he doing at the time?
"A. He was standing behind the operator."

I won't read the rest. That certainly is sufficient to take it. There is a direct statement of his participation and the objection is overruled on all grounds and Exhibit No. 6 is admitted.

Now will you tell us about Exhibit No. 7?

Mr. Kinnie: As to Plaintiff's Exhibit No. 7, I
174 find nothing in State v. Gregory, 25 Wash. (2d) 777, that in any wise has any application here.

I had reference to the Chicago case—that isn't the one.

First, with reference to Exhibit No. 7, I object to the "Armed Robbery" appearing in the upper righthand corner.

The Court: That should be delted and will be.

Mr. Kinnie: I object to the question and answer appearin on Page 2, at the top of the page:

"Q. What kind of discharge did you get?
"A. General."

Mr. Tracy: The State feels that should be deleted, if the Court please.

The Court: Yes.

Mr. Kinnie: Should we delete it as we go along?

The Court: It might be a good idea if you did, Mr. Kinnie.

Mr. Kinnie: "What kind of a discharge did you get" is deleted.

The Court: Delete both the question and the answer. Turn it over and delete "Armed Robbery" while you are about it.

(Whereupon, counsel made both deletions.)

Mr. Kinnie: And, again, the same general objections that were made to Exhibit No. 6 I would make to Exhibit No. 7, and specifically with reference to the fact that the statements contained in Exhibit No. 7 do not constitute a

confession to the crime of robbery. If they constitute a confession to any crime at all it would be "Larceny".

175 Again, because there is no showing of force, fear or violence exercised upon the complaining witness, Mr. Shane, at the time the money was obtained, the same general objections, without repeating them, would apply to Exhibit No. 7.

The Court: Here, likewise, there is an admission of the stick-up, as he calls it, and of his putting his hand to his back and informing him it was a stick-up and procuring the money. The same ruling will be made with respect to No. 7.

Mr. Tracy: Now, if the Court pleases, I would at this time like to make a request of the Court to be allowed to read these instruments to the jury and I know the hour is late, but—

The Court: No, there is no need of that. You can read them to the jury if you want to during your argument. I don't think I would now.

Mr. Tracy: Will we be given ample time during the argument?

The Court: I will see that you have at least an hour and a half at least for argument. That is time enough for you.

Mr. Tracy: That would be fine.

Mr. Kinnie: If Your Honor please, am I correct in assuming the State has now rested?

Mr. Tracy: As soon as these exhibits are in.

The Court: They are admitted, and maybe, to avoid calling the jury the second time, you had better make your motion, if you have one to make, at this time.

176 WHEREUPON, said statements were admitted in evidence as PLAINTIFF's EXHIBITS Nos. 6 and 7, and are attached hereto and made a part hereof.

Mr. Kinnie: The State having rested and the jury being absent, this motion being presented out of the presence of the jury on behalf of both defendants, we wish at this time to challenge the sufficiency of the evidence introduced in the State's case in chief, upon the ground that the evidence is wholly insufficient to establish a prima facie case of robbery, in that there is no evidence or reasonable inference from the evidence showing or tending to show that any force or

violence was exercised by these defendants upon Mr. Shane, the complaining witness, at the time the money was obtained, and upon the further ground that the evidence is wholly insufficient to establish the degree of fear required by statute and decisions under the laws of the State of Washington, in order to constitute the crime of robbery.

(Whereupon, counsel presented his argument to the Court in support of his motion.)

Defendant's Motion to Dismiss and Denial Thereof

Mr. Kinnie: For the reasons and upon the grounds stated on behalf of both defendants, we feel very strongly that this case should be taken from the jury and dismissed, and we so move the Court at this time.

The Court: Gentlemen, I am sorry I can't construe this evidence as you do. If your factual basis were correct in the testimony that would be fine, but this testimony is clear. This old man was sitting in there reading and these men came in and asked for some change finally, and when he opened the till they told him it was a stick-up. In the meantime, one stood by his side and the other one
177 stood in back of him punching his knuckles, as I gathered, into his back, if that is what it was. He doesn't know himself. He didn't know whether it was a gun or what it was, but he specifically testified and was specifically asked to answer why he gave this money to these two men and he said, well, he didn't want to get shot. He said he was in fear. There just isn't any question about it.

Now looking at it for a moment from the angle of reasonableness, I think almost any man under the same circumstances would have delivered that money and would have been in fear unless he had some magic way of looking in back of him to see what was going on and even then he had two men there who he, at his age—he looked to me to be a man who was well into his sixties—wouldn't be able to overpower. I think the evidence is replete here. They have admitted it. They have admitted it was a stick-up and told what they did. I don't see where the element of fear is eliminated in this case by the testimony. It is here. The motion is denied and an exception is allowed.

Mr. Kinnie: One more request, if the Court please. This Mr. Bauer, who testified as a notary on one of the statements for the State is the one I asked Your Honor to issue a subpoena for during the noon hour. He tells me he has to catch an airplane tonight to get out of town. I should like to put him on the stand and introduce through him this General Order No. 99.

The Court: Do you have any objection?

Mr. Tracy: I have no objection.

The Court: I would like to have you make a state-
178 ment. You can put him on first and make your statement afterwards so I can rule accurately on what your theory may be factually.

Mr. Kinnie: That is what I would like to do, put him on now and then make an opening statement.

(Whereupon, the following proceedings were had in open court within the presence and hearing of the jury.)

* * * * * * * * * * *

183 The Court: Mr. Kinnie, before you make your opening statement and because you took the time to read this, now I am going to grant Mr. Tracy permission to read Exhibits 6 and 7 here.

Mr. Kinnie: Very well.

Mr. Tracy: Ladies and gentlemen of the jury, at this time I would like to read to you Plaintiff's Exhibit No. 6, which is a statement by Raymond LeRoy Haynes, dated December 20, 1957. This is a statement that was taken in the presence of a stenographer, Dorothy Jeanes, in the presence of Detective Peck and Detective Cockburn.

184 This is the statement of Raymond LeRoy Haynes and I will read the questions and answers:

"Q. Would you state your full name? A. Raymond LeRoy Haynes.

Q. Where do you reside? A. West 3504 Second Avenue, Spokane.

Q. Are you married? A. Yes.

Q. Do you have any children? A. Yes, one.

Q. What is your occupation? A. Sheet metal worker.

Q. Are you working now, Ray? A. No.

Q. When was the last time you worked? A. The middle of October.

Q. Just you and your wife live at that address? A. No, my father and brother, too.

Q. What is your father's name? A. George David.

Q. What is your brother's name? A. Keith Edward.

Q. Is Keith working at the present time? A. No.

Q. Is your father working? A. No.

Q. Regarding the incident that happened last night, Ray, would you please tell in your own words what took place from the time you left your home? A. Well, I went to town about sometime before noon.

185 Q. With whom? A. My dad and brother—went to the Gay Tavern and drank beer until 1:30.

Q. 1:30 P. M.? A. Yes. Then went home and picked up my daughter from the baby-sitter, my neighbor, and left the baby at home with my father.

Q. Was your wife home at the time, Ray? A. No.

Q. Where was your wife? A. Working.

Q. Where does she work? A. S. H. Kress Company.

Q. Then what did you do? A. I went back up to the Gay Tavern.

Q. Alone? A. No, my brother and I went.

Q. You and your brother, that is Keith Haynes? A. Yes.

Q. And you started drinking beer again? A. Yes, until eight o'clock, or better.

Q. During the time you entered the tavern, and left at 8:00 p.m., how much would you say you had to drink, Ray? A. Twelve or fourteen bottles of beer.

Q. Would you say that your brother had about that much to drink? A. Yes.

Q. When you left the tavern, would you consider
186 yourself drunk? A. Yah.

Q. While in the tavern, did you and your brother talk about holding up a service station? A. I don't know if we did in the tavern or not. I really don't know.

Q. And after you got out of the tavern and got into your car—incidentally, do you own a car? A. Yes. Well, the finance Company and I.

Q. What kind of a car is it? A. A 1952 Ford.

Q. What is the color? A. Blue and white.

Q. Do you know the license number? A. No. It's a Washington "C" plate though.

Q. After you got into the car when you left the tavern,

did you talk about holding up a place at that time? A. Apparently we did.

Q. Did you talk about hold up a service station? A. We presumably did.

Q. And to get one that wasn't very busy? A. Yes.

Q. How long did you drive around looking for a service station that wasn't busy? A. I don't know.

Q. Approximately how long? A. About four or five miles we drove.

Q. What part of town were you driving in—do you remember? A. I imagine we went north.

187

Q. You went north first? A. Yes.

Q. Then, what happened? A. Can't I talk to the prosecutor before I go any further with this statement?

Q. We just want to get this down for our records, and then we will go to the prosecutor's office and he will ask the same questions that I am. A. Well, we spotted this Richfield Station and it didn't look busy.

Q. Where was it, do you recall? A. On the corner of Wellesley and Crestline.

Q. Do you know which corner? A. The northwest corner.

Q. What happened after you got to the service station? A. (No answer.)

Q. After you got to the service station, where did you park your car? A. In the alley.

Q. This alley is adjacent to the station? A. Yes.

Q. Does the alley run east and west or north and south? A. Well, I figure it would be north and south.

Q. You parked the car in the alley. Then what happened? A. We went into the station.

188

Q. Both you and Keith together? A. Yes.

Q. Then what happened? A. I asked the operator for four-bits change. When he opened the 'till', I told him, 'This is a stick-up,' and to give us the loot and money, and he did.

Q. To whom did he give the money to? A. To me.

Q. Was that currency? A. Yes.

Q. What did you do with the money? A. I put it in my left coat pocket.

Q. Where was Keith at this time? A. In the station.

Q. What was he doing at the time? A. He was standing behind the operator.

Q. Did Keith say anything to him? A. I can't recall Keith saying a word.

Q. After you got the money, then what happened? What took place? A. We told him to get in the utility room.

Q. And he went? A. Yes.

Q. Did you lock him in? A. I don't know if Keith did. I left before him.

Q. Did you threaten the man? A. I didn't, and I didn't hear Keith say a word.

Q. Did you have a gun during this hold-up?
189 A. No.

Q. Did Keith have a gun? A. No.

Q. You say that you left the station a few seconds ahead of Keith. Where did you go? A. I went up Crestline. I walked to Crestline.

Q. About half way up the block? A. Yes, about half a block.

Q. You stopped? A. Then I cut back over to the alley where the car was parked.

Q. Then what took place at that time? A. Then I saw Keith in custody.

Q. By whom? A. I don't know.

Q. By police officers? A. I don't know that. I think someone with a gun.

Q. You stated you saw a silhouette? A. Yes.

Q. This man was taking Keith to the car? A. Yes.

Q. Did you see him get into the car? A. No.

Q. Then what did you do? A. I waited in the alley a few minutes and then decided to go over to Division. I don't know where I was or how far from the scene when
I met a police car, and they pulled over and shined
190 their lights on me and asked me if I had seen a man about 35.

Q. Two uniformed officers? Were they in a police car? A. Yes. I told them "no", and I turned around and walked to the nearest residence.

Q. Why did you do that, Ray? A. I pretended that I was going in and go to bed. I thought that they would drive off.

Q. You went up to the door? A. Yes.

Q. Did you open the door? A. No.

Q. Were there lights on in the house? A. I don't remember.

Q. Did you try the door? A. The storm door.

Q. Then what happened? A. I saw that the police car wasn't going to go on, so I gave up the ghost and told them that I might as well ride down town with them.

Q. Did you tell them that you were one of the men in the holdup? A. No.

Q. Do you remember telling the police officers, 'Let's go, you got me!' A. No. No, it seems that I said, 'I might as well go down town with you.'

Q. You didn't say why? A. I don't remember.
191 I was feeling pretty low—high and low at the same time.

Q. Did the police officers ask you why you should ride down town with them? A. I don't know. They just assumed that I was the one they wanted. I really don't know.

Q. After the police officers brought you down to the station, Ray, what took place? A. I sat in this room for a while—one hour—and they brought in a lineup and then they took me up stairs in jail.

Q. Did the lieutenant talk to you last night? A. I think so.

Q. Were you searched at the time? A. Yes.

Q. Who did the searching? A. I don't know; I believe one of the officers who brought me in.

Q. Did he find any money on your person? A. I don't know. All I have is you guys' word.

Q. Did you see the police officers count any money? A. I think the lieutenant counted $57.00.

Q. Did you have that money on your person prior to the service station incident? A. No.

Q. How much money do you think you had on your person when you left the tavern? A. I don't know. I thought about eight bucks, unless they got that mixed up with the loot.

Q. This statement is the truth to the best of
192 your knowledge that you have just given us, Ray?
A. Yes, it is, to the best that I can remember.

Q. After it is typed up will you be willing to sign it as the truth after it has been read by you? A. Yes.

Q. Have we made you any threats or promises? A. No.

Q. Has any police officer made you any promises or threats? A. No, except that the lieutenant promised me that as soon as I was booked that I could call my wife.

Q. You are being held for investigation. You haven't been booked yet. When you are you will be able to phone your wife."

Now, ladies and gentlemen of the jury, I will read Plaintiff's Exhibit No. 7, which is a statement of Keith Edward Haynes, taken on December 20, 1957 by Detective Peck in the presence of Detective Cockburn. The statement was reduced to shorthand and later transcribed by Dorothy Jeanes.

"Q. Would you state your full name, please? A. Keith Edward Haynes.

Q. Where do you reside, Keith? A. 3504 West Second Avenue.

Q. Whom do you live with? A. Same as my brother.

Q. That is Raymond? A. Raymond LeRoy Haynes.

193 Q. Who else lives there? A. His wife, daughter, and my father.

Q. What is your father's name? A. George Haynes.

Q. Are you married or single? A. Single.

Q. How old are you? A. Twenty-eight.

Q. Are you working now? A. No.

Q. When was the last time you worked? A. The last of July.

Q. What is your occupation? A. Wire cutter and machine shop worker.

Q. Have you been drawing your unmployment insurance? A. Yes.

Q. Have you been in the service? A. Yes.

Q. Keith, regarding the incident that happened last night, tell us in your own words what happened. A. Well, I was broke and half boozed up—

Q. State what happened from the time you left the house. A. I left the house and came down town and drank a while.

Q. What time did you leave the house? A. In the morning sometime, about eight o'clock or 8:30.

194 Q. Who did you leave the house with? A. My brother.

Q. Your brother, Raymond? A. Yes.
Q. Who else? A. My father.
Q. Where did you go after you left the house? A. We took his wife to work.
Q. You mean Raymond's wife? A. Yes.
Q. Where does she work? A. At Kress' Store.
Q. Where to then? A. We went to a bar.
Q. Do you know the name of the bar? A. No, I don't.
Q. Do you know what street it's on? A. No, I don't.
Q. How long did you sit in this bar? A. Until one or 1:30, and then we went back home.
Q. During that time what were you drinking in the bar? A. Beer.
Q. Bottles or glasses of beer? A. Bottles.
Q. You say you left the tavern about 1:00 p. m.? A. Yah.
Q. Where did you go? A. We went home and got his daughter.
195 Q. Your brother's daughter? A. Yah.
Q. Where was she? A. Left his daughter at the neighbor's to take care of her.
Q. Then what happened? A. We came back down town and went to the meat locker.
Q. You say 'We', who is that? A. Raymond, I, and my father and the little baby.
Q. You went to the meat locker and picked up some meat? A. Yes.
Q. Where was this meat locker at? A. You go out towards Fort Wright, then you turn right and come out on Indiana.
Q. Then what happened? A. Took them home again and left her and my dad home and then came back down town.
Q. When you came back down town, where did you go? A. To a bar.
Q. The same bar that you were in before? A. Yes.
Q. How long did you stay in the tavern the second time? A. Until eight o'clock.
Q. 8:00 p.m. in the evening? A. Yes.
Q. The time you spent in the tavern, both times, Keith, how much beer, how many bottles would you
196 say you had to drink? A. I don't know.

Q. Approximately? A. We are pretty fast drinkers; I don't know what to say.

Q. About ten or twelve? A. At least.

Q. Who paid for the beer? A. My brother.

Q. Did you have any money on you? A. Two dollars.

Q. Did you discuss this incident that happened last night at the tavern? A. No, I don't think so.

Q. After you left the tavern you got into Ray's car? A. Yes.

Q. What kind of a car is it? A. A 1952 Ford—I think it is a 1952.

Q. Do you know the color? A. Blue and white.

Q. Do you know the license numbers? A. No.

Q. Is it a Washington license? A. Yah.

Q. After you got into the car, was Ray driving? A. I believe so, yah.

Q. And you discussed the holdup of this service station after you got into the car? A. Yes.

197 Q. What happened after you got into the car? A. We got into the car and started driving around. We were both broke and we spotted this little dinky service station and decided we would pull a 'bluff' on them.

Q. Did you look at any others? A. Two on the corners, two or three.

Q. On the north side of town? A. I don't know where that was.

Q. You drove by this service station in question. Was that a Richfield Station? A. I don't believe so. I think it was a Shell Station. It might have been a Richfield Station, though.

Q. Do you know where it's located? A. No.

Q. Have you any idea at all what part of town it is in? A. No, I don't pay much attention when I'm driving.

Q. After you went by the service station, then what happened? A. We decided to pull a 'bluff' on them.

Q. Where did you park the car? A. In the alley.

Q. Behind the service station? A. Behind or alongside of it.

Q. You say that you were going to pull a 'bluff'. What do you mean by that? A. Well, we didn't have no gun—it's a good thing.

198 Q. You both walked into the service station together? A. Yah.

Q. What did you say to the man when you got into the service station? A. I didn't say anything until he got into the room.

Q. Who said something? A. I did.

Q. When you got into the service station who spoke to the man? A. I believe he did.

Q. Who's 'he'? A. My brother.

Q. What did he say? A. He asked for some directions and for some change.

Q. He asked for directions on what? A. To find some street, or something.

Q. And then what did he ask him? A. For some change —fifty cents or something.

Q. Then what did the man do? A. Started giving him the change.

Q. From where? A. From out of the cash register. He said, 'This is a stickup.'

Q. Who said that? A. Raymond.

Q. Where were you at that time, Keith? A. Standing in back of him.

199 Q. How did the service station operator know that this was a stickup? A. He didn't think so, he laughed.

Q. What made him to believe that it was a stickup? A. Well, we didn't laugh back.

Q. Did you have a gun on him? A. No.

Q. What did you do? A. Put my finger in his back.

Q. Before you put your finger in his back, did you have your hand in your coat pocket as if you had a gun? A. I don't know if I did or not.

Q. Then you got behind his back and pressed your finger in his back? A. I didn't press my finger, I just placed it in his back.

Q. What did you say? A. I didn't say anything.

Q. Did he get some money out of the cash register? A. Yes.

Q. Whom did he give it to? A. My brother.

Q. Do you know how much it was? A. No.

Q. Then what happened after he gave the money to Raymond? A. I told him to get into the utility room, or lube room.

200 Q. Who told him, you or Raymond? A. I don't know now if it was me or Raymond.

Q. And he went into the room? A. Yes.

Q. After you got in the room what took place? A. I told him to 'cheer up, you're insured.' He said, 'No, I'm not,' or something. I don't remember.

Q. Did you lock the door to this room? A. No.

Q. Then what happened after this? A. We took off.

Q. You left the station together? A. Yah.

Q. You ran? A. Yah.

Q. Where did you run? A. Took off in the back—we got mixed up in the directions.

Q. Did you go down the alley? A. No, down the block and circled back.

Q. Then what happened while you were running? A. I stumbled.

Q. You stumbled? A. Yes.

Q. Did Raymond keep on going? A. He must have because when I got up he was gone.

Q. After you got up from stumbling what happened? A. I kept going.

201 Q. Running? A. No, I walked around a couple of blocks.

Q. Then what happened? A. That's it. I walked up to the patrolman then.

Q. Did you come back to the car? A. Yes.

Q. It was parked in the alley? A. Yes.

Q. Was that where you met the patrolman? A. Yes.

Q. Was he a uniformed officer? A. Yes, I think so.

Q. What did he say? A. 'Get them up; get over to the car and put your hands up on the car,' or something like that.

Q. What did you tell him? A. I didn't tell him anything.

Q. You did as he told you to do? A. Yes.

Q. Whose car did he put you in? A. He left me standing for a few minutes until somebody else came up and frisked me, and then put me in a detective's car.

Q. What did you tell the detectives? A. I don't know. I said something to them that they didn't like.

Q. They brought you to the station? A. Yes.

Q. You were later questioned at the station? A. Yes.

202 Q. Do you remember that questioning? A. Most of it.

Q. Do you remember being put in a lineup? A. Yes.

Q. Do you remember what took place while you were in that lineup? A. I think there were four other guys.

Q. Did they take a picture of the lineup? A. Yes.

Q. You remember everything that took place during the time of the holdup, while it was going on, the bluff and all? A. Yes, most of it.

Q. You weren't too drunk, then? A. I was feeling pretty good, though.

Q. Everything you told us is the truth to the best of your knowledge? A. Yes.

Q. Has anybody made any promises or threats, Keith, regarding this statement? A. No.

Q. You gave this statement of your own free will? A. Yes.

Q. After it is typed up you are willing to sign it after you read it? A. After I read my brother's, first.

Q. Is this the only job you have pulled, Keith? A. Yes.

Q. You haven't done anything else, then? A. No.

Q. You have never been in trouble before? A. No."

Mr. Kinnie: Might we approach the bench for a minute?

The Court: Yes.

(Whereupon, the Court and counsel had a discussion within the presence and outside the hearing of the jury.)

The Court: Members of the jury, we have reached the point here where I don't want to ask counsel to go ahead at this closeness to the regular adjournment hour. We will finish tomorrow. So you may retire now for your evening adjournment.

(Whereupon, the trial in the above case was adjourned until 9:30 o'clock a. m., Friday, March 21, 1958.)

204 9:30 o'clock, a. m.,
Friday,
March 21, 1958.

(Whereupon, the trial in the above case was resumed pursuant to adjournment.)

The Court: You may proceed.

(Whereupon, counsel for the defendants presented his opening statement to the jury.)

Mr. Kinnie: I will call Raymond Haynes.

RAYMOND LEROY HAYNES, a defendant herein, called and sworn as a witness in his own behalf, testified as follows:

Direct Examination

By Mr. Kinnie:

Q. State your name to the Court and jury, please. A. Raymond LeRoy Haynes.

Q. And where do you reside, Mr. Haynes? A. West 3504 Second Avenue, Spokane.

Q. Are you married? A. Yes.

Q. Your wife's name? A. Esther Haynes.

Q. Do you have any children? A. Yes.

Q. How many? A. One.

Q. Boy or girl? A. Girl.

Q. How old? A. 22 months the 28th of this
205 month—she was born 28th of June, 1956.

Q. Now, Mr. Haynes, what line of employment do you follow? A. Sheet metal worker.

Q. For whom have you worked? A. Holman Sheet Metal Company, the Ephrata Sheet Metal Company, Russ Owens Plumbing and Heating.

Q. It has been in the sheet metal line, is that correct? A. Yes, sir.

Q. Were you employed on December 19th? A. No.

Q. 1957? A. No.

Q. How long have you been unemployed? A. I think it was the 14th of October, 1957.

Q. Now on December 19, 1957 what did you do in the morning? A. Well, I got up and dressed.

Q. Mr. Haynes, to speed this along a little bit, did you have occasion on December 19th to take your wife to work? A. I did.

Q. At approximately what time? A. About 8:20, a. m.

Q. And did you take her there by yourself? A. No.

Q. Who was with you? A. My father, George David, and my brother, Keith Edward, and of course my wife.

Q. And Keith Edward is your brother? He is
206 seated here at the counsel table? A. Yes.

Q. And where does your wife work? A. S. H. Kress Company store on Main, between Post and Wall Streets.

Q. And that is where you took her? A. Yes.

Q. And where did you go from there? A. Gay Tavern, on Stevens Street, between Main and Riverside.

Q. Do you recall the approximate time you got to the Gay Tavern? A. Oh, I would say about 25 or maybe 20 minutes to nine.

Q. And what did you do at the Gay Tavern? A. Well, I drank beer, played shuffleboard.

Q. You played what? A. Shuffle-bowl. It is a coin-operated machine with simulated bowling pins on it, and I believe we played another machine there. What the correct term would be I don't know—pin-ball maybe.

Q. You stated that you drank beer at the Gay Tavern. This beer you were drinking, was that in bottles? A. Yes.

Q. Cans, or what? A. What is commonly known as a "stubbie" bottle.

Q. That is the little short bottle? A. Yes.

Q. And do you have any idea as to how fast you
207 were drinking? A. Well, my usual speed.

Q. No, not your usual speed. What were you doing that day? A. I would say three or four bottles an hour.

Q. How long were you at the Gay Tavern? A. I believe it was about quarter to one when we left.

Q. And when you say, "when we left" you mean all three of you? A. Yes.

Q. And did you have a telephone call before you left, do you remember? A. I believe I made one.

Q. In any event, you left the tavern at a quarter to one? A. Yes.

Q. And where did you go? A. To my residence.

Q. And what did you do there? A. I went to the apartment of Mrs. and Mr. Robert Smith and told them that I would take my daughter home and baby-sit with her over there.

Q. And did you do that? A. Yes.

Q. Then did you do anything else at your home? A. I am not positive, but I believe I made a sandwich out of some left-overs from the evening before. I know that my father and my brother did but I am not positive whether I did.

Q. Now did you at any time that day leave your
208 home again? A. Yes.

Q. Do you recall approximately what time it was? A. I don't think it was after 1:30.

Q. What time did you get home? A. About quarter to one.

Q. You were not there very long? A. No.

Q. Did you leave by yourself? A. No, I left with my brother and my father,—

Q. All right, where did you go? A. I believe we went to the Gay Tavern.

Q. And would you tell the Court and jury approximately how long you were at the Gay Tavern that time? A. I don't remember leaving it.

Q. Well, what time did you get down to the Gay Tavern? A. The second time?

Q. Yes. A. About 1:30.

Q. Well, now, you heard the testimony of the other witnesses in this case, Mr. Haynes, about the things that happened out at this service station at Wellesley and Crestline? A. Yes.

Q. Do you remember anything about that? A. I remember being stopped on the street and somebody asking me if I had seen a man about 45 years old.

Q. Where was this that you were stopped on the street? A. I don't know that, either.

Q. Do you know who it was that stopped you? A. I know now who it was. It was two officers in a city prowl car.

209 Q. Well, you are referring now to the time you were arrested? A. Yes.

Q. All right, and will you tell the Court and jury in your own words what happened after that? What did they do

to you and where were you taken? A. Well, after that I remember crying in that car and some man kept asking me over and over if I had a gun and what I had done with the gun, if I didn't have one, and I remembered telling him absolutely and certainly that I didn't have any gun and the next thing I remember is standing at the desk—it is more of a counter—in the police station with my hands on the desk like so (indicating), being searched, and then I remember, I believe it was Officer Pike, I am not certain, that took me back to the lineup room which is also apparently an interrogating room. Then I can remember talking with two officers, one of which I am pretty certain is Mr. Pike, and the other one I can't remember ever having seen before or since.

Q. You say you remember talking to these two officers. What do you mean by that? A. Well, I really didn't mean anything, just that—well,—

Q. Were they interrogating you? A. I hadn't got that far yet.

Q. Just go ahead. A. I just found myself in the interrogation room.

Q. All right. A. They kept wanting me to own up to robbing a Richfield Service Station and I asked Mr.
210 Pike several times if I could call a lawyer and he said if I cooperated and gave him a statement—I cannot testify as to his exact words he used—I can only testify to general conversation.

Q. All right. A. After I made a statement—I don't remember at that time him specifying that if I signed it or not—that I would be allowed to call, to make a phone call, and I decided I didn't want to call an attorney because I didn't know an attorney that I figured was qualified and I didn't know if the police department had notified my wife at my residence and I didn't know if she had made any arrangements to contact me an attorney.

Q. Let me interrupt you, you are not talking now about conversation with Officer Pike? A. No.

Q. This is something that went on in your mind? A. Yes.

Q. Now you stated that you remember being at a counter with your hands on the counter and being searched? A. Yes.

Q. Did they take any money or valuables from you at that time? A. I don't remember if they did or not.

Q. Well, do you recall being placed in a lineup? A. Yes.

Q. Well, go on and relate what happened there. A. Well, from what point?

Q. Well, when you were taken to the lineup room who was there? A. Well, I was there all by myself.

211 Q. All right, then what happened? A. Then my brother joined me in there and about four, three or four minutes, maybe five minutes later I believe three men also joined us in there.

Q. All right, then did anything happen? A. Well, an officer, I don't know who, a plain-clothes officer I think, told us to line up along the far wall, told us what positions, I think. Anyway, I wound up in one corner and I believe my brother wound up in the opposite corner, to my left.

Q. Then what happened, if anything? A. Well, another short time passed and somebody opened the door to the lineup room and told me to take off my cap and told my brother, Keith, to put on his glasses and then they closed the door again.

Q. Did you talk to Keith at that time? A. Prior to that, before the other people in the lineup joined us.

Q. Go ahead. Let me ask you this: After the Officer asked you to take off your cap, you say, and asked your brother to put on his glasses? A. Yes.

Q. How much longer were you in that room, do you remember? A. Quite a little while. I imagine fifteen or twenty minutes, anyway.

Q. All right, when you left the lineup room where did you go? A. To jail.

Q. And by "to jail" you mean the City Jail?

212 A. Yes.

Q. And were you booked there? A. On investigation, I think. I can't say that I was because I don't know, but I think that is what they did.

Q. All right, was anything else done that night? A. I can't recall anything else.

Q. Now the next morning, that would be December 20th, on a Friday, state whether or not you were taken from the city jail to some other location in the City Hall and interrogated. A. First, I believe I was taken to identification and finger-printed, weighed and photographed.

Q. Then were you taken down and interrogated? A. Yes.

Q. And how long were you interrogated, do you remember? A. (No response).

Q. You heard the testimony for the last couple of days with respect to that. You were there about an hour and a half. Would you say that is a fair estimate?

Mr. Tracy: If the Court please, I object on the basis this is leading. I think the witness should tell his own story.

The Court: Sustained, as leading.

Mr. Kinnie:

Q. All right— A. I am trying to figure it out for myself. I believe it must have been about nine when they took me into identification because, well, the office was all cleaned and the fellow that fakes your finger-prints, he had to set up his papers and stuff.

213 Q. Well, in any event, you were then taken somewhere for interrogation, is that correct? A. Yes.

Q. And do you recall approximately how long you were there before a stenographer was called in? A. I would say at least an hour or longer.

Q. And would you relate to the Court and jury what you can remember of that interrogation? A. There was two officers in the same room. I am pretty certain it was the same room that I was interrogated in the night before. One of those officers was Mr. Cockburn. The other officer I am not absolutely certain of but I think he said his name was Peck, Detective Peck.

Q. Mr. Haynes, can you relate just generally what you remember of the questions that were asked you? What was said? A. Well, the officers questioned me about whether I was married, single, where I lived, any children, ever been in trouble before. They asked me who and where my mother was, if I had any more brothers and sisters, their names and where they lived, and then they questioned me about robbing this Richfield Station.

Q. Did the officers at that time, state whether or not the officers at that time asked you to give them a statement. A. Yes.

Q. And what was your answer to that? A. I wanted to call my wife. Q. And were you allowed to call your wife? A. No.

214 Q. This was on Saturday? Strike that. This was on Friday? A. Friday.

Q. December 20th? A. Yes.

Q. And was anything else said with respect to making a telephone call? A. Mr. Pike and the other officer both told me that when I had made a statement and cooperated with them that they would see to it that as soon as I got booked I could call my wife.

Q. Well, that was the night before you were told that, wasn't it? A. I was told that the next day, too, several times.

Q. Who were the officers that were with you? A. Oh, not Mr. Pike. Mr. Cockburn and Mr. Peck, I believe.

Q. In any event, Mr. Haynes, did you soon after that give them a statement? A. Well, not readily.

Q. Did you give them a statement? A. Yes.

Q. And that statement appears in evidence in this case? A. In my own mind the statement I gave them isn't in evidence in the exact form that I gave it to them.

Q. Well, you signed it, didn't you? A. Yes.

Q. Now I will ask you, Mr. Haynes, if after you signed this statement were you then allowed to make a

215 telephone call? A. No.

Q. Well, what was done with you then? A. I was taken—after signing the statement?

Q. Yes. A. I was returned to the City Jail and put back in a drunk tank and then I imagine about an hour, no, it must have been more than that, a couple of hours, Lieutenant—I don't know if they are called lieutenants or what they are—Mr. Cockburn and I believe it was Mr. Peck got me from the jailer and at the same time got my brother and took us to the Spokane County Courthouse to the office of Carroll Gray, Deputy Prosecutor.

Q. At that time and place did you give another statement? A. Yes.

Q. And was that taken by a stenographer? A. Finally, yes.

Q. Were you asked to sign? A. Yes.

Q. What did you say? A. I refused and asked permission to call my wife.

Q. Were you allowed to make a telephone call at that time? A. No.

Q. When were you allowed to make a telephone call?

A. I am not absolutely certain but it was either the Tuesday before Christmas, the 24th or the Thursday after Christmas, the 26th.

216 Q. Where were at that time? A. The office of Carroll Gray.

Q. And were you at that time and place again asked to sign a statement? A. Yes.

Q. And what was your answer? A. I told him all the promises of all the officers I had talked to had not been fulfilled and I had not been able to call my wife and I would sign nothing under any conditions until I was allowed to call my wife to see about legal counsel.

Q. All right, now Mr. Haynes, have you been in trouble before with the law? A. Yes, I have.

Q. When was that? A. 1947.

Q. Where was that? A. Wenatchee, Washington.

Q. What happened? A. What happened? You mean disposition or charge?

Q. What was the charge? A. Drunken driving, resisting arrest and no driver's license.

Q. Were you in trouble any more? A. In 1950.

Q. Where was that? A. Pine City, Minnesota.

Q. What was the charge? A. I am not sure if it was armed robbery or highway robbery. I am not certain.

217 Q. Some form of robbery? A. Yes.

Q. You were convicted? A. Yes.

Q. All right, were you in any other trouble? A. Yes.

Q. Where? A. Pine City, Minnesota.

Q. When? A. 1949.

Q. What was the charge? A. I don't know. It was a State of Minnesota, classified as a gross misdemeanor, but I don't know what the formal name of the charge would be.

Q. You mean a gross misdemeanor? A. Yes.

Q. You don't know what the charge is? A. It would be similar to breaking and entering, though.

Q. Were you convicted? A. I pleaded guilty.

Q. Now when did you come out here to Spokane? A. October, 1955.

Q. Were you at that time on parole? A. Yes.

Q. And under whose supervision were you placed? A. When I reported to the parole office here I was assigned to Mr. Johnson.

Q. That is the Washington State Parole Board, is that what you mean? A. Yes.

218 Q. And then the specific parole officer was Mr. Johnson? A. I only reported to him once and he told me that the next time I reported my agent would be Donald Blackburn.

Q. How long were you under Mr. Blackburn, just approximately? A. About three or four months.

Q. Were you then placed under someone else? A. Robert Lizee.

Q. How long were you under Mr. Lizee? A. Until December. I must have come out here in 1954 because I was on parole 25 months and I got discharged from parole in December, 1956, the first week in December.

Q. Did Mr. Lizee, while he had you under his supervision, state to you that he was going to recommend you be discharged from parole? A. Yes, after I had been on parole one year.

Q. Did he do that? A. He did.

Q. And you were discharged? A. Not at that time. The State of Minnesota continued me one more year.

Q. Then you were discharged? A. Yes.

Q. In any event, you now are discharged? A. Yes.

Mr. Kinnie: I think that is all.

219 Cross-Examination

By Mr. Tracy:

Q. Mr. Haynes, I now want to ask you a few questions concerning the date of December 19, 1957. I believe you testified that you took your wife to work at 8:20 a. m., is that correct? A. About.

Q. Those were your words, "8:20 a. m." Do you recall how you recall that specific time? A. I don't mean it was exactly 8:20. It could have been 8:19 or 8:25.

Q. Well, how do you recall the time of 8:19 to 8:25 then? A. That is approximate, I mean.

Q. Did you look at a watch? A. I have got two clocks in my kitchen.

Q. You think you looked at one of those clocks? A. Yes.

Q. And then you recall that you went to the Gay Tavern at 8:40 a. m. Those are your words, again, Mr. Haynes. How do you recall 8:40 a. m.? A. I was estimating the

time, driving downtown and leaving my wife out of the car and finding a place to park.

Q. Do you recall the drive to town from your house? A. Yes.

Q. Do you remember the street you went down? A. Yes.

Q. What street did you go down? A. I went down "G" to Government Way, Government Way to Clarke.

220 Clarke is a short block there, and there is a street I never did know the name of. From Clarke I took this short street and went over to Main and went up the Main Street hill, turned right on Monroe, and where Monroe and Riverside come together I turned left and I proceeded down Riverside to Wall Street, drove down Wall to Main, turned to my left and parked in front of the S. H. Kress Company.

Q. Are you absolutely certain of that? A. Well, I might have turned another corner. I don't know.

Q. That is the way that you went when you took your wife to work? A. That is the way I usually take her.

Q. What kind of a car do you have, Mr. Haynes? A. 1952 Ford.

Q. Then you recall making a telephone call, is that correct, after you went to the Gay Tavern? A. Yes.

Q. Do you remember approximately what time that was? A. I believe it was in the neighborhood of 12:30.

Q. About 12:30. You state you had three or four bottles of beer an hour, is that correct? A. Yes.

Q. Did that carry on throughout the day? A. Yes.

Q. Do you remember hour for hour then that you had three or four bottles of beer per hour? A. I know that I wasn't sitting around not doing anything.

Q. Who was serving you, Mr. Haynes, throughout

221 this time? A. Three men.

Q. Three men were serving you? A. Yes.

Q. Three men throughout the day, three different men, is that correct? A. Right.

Q. Do you remember the last man that served you that day? A. I think it was Al Bombino.

Q. Do you remember Mr. Bombino? A. Yes.

Q. You do know him? A. Yes.

Q. Do you recall that he was the last man that served you that day to the best of your recollection? A. I am not certain but I think so.

Q. Then you state that you went to the apartment house, to an apartment house where a Mr. and Mrs. Smith were baby-sitting, is that correct? A. This apartment house, it is a duplex. The Smiths live in one end and I live in the other.

Q. Approximately what time was that, do you recall? A. Somewhere near one o'clock.

Q. How do you recall that particular time? A. Because I knew that Mrs. Smith had an appointment, I think it was a dentist appointment. It might have been a doctor's appointment.

Q. You remember a discussion about a dental appointment or a doctor's appointment for one o'clock? A. Yes.

222 Q. Now you went in the tavern at approximately at, was it 8:40? Was that approximately when you went to the tavern? A. Somewhere between 8:30 and quarter to nine.

Q. And what time did you leave the tavern? A. Well, after 12:30 and before one o'clock.

Q. Somewhere between 12:30 and one? A. Yes.

Q. And how long were you away from the tavern now after you went to the duplex? A. Oh, half or three-quarters of an hour.

Q. Half or three-quarters of an hour, and then you went back to the tavern, is that correct? A. Yes.

Q. And approximately what time did you arrive back at the tavern? A. Approximately 1:30.

Q. About 1:30, you recall that? What happened after you got back to the tavern? A. Oh, I drank more beer, played poker, played some of the other customers in there to see who bought the drinks on the shuffle-bowl.

Q. Were you buying drinks throughout the day? A. I was winning about as many as I was buying in the forenoon.

Q. How much money did you have with you when you went to the tavern in the morning? A. About $17.00.

Q. About $17.00? A. Yes.

223 Q. Now do you recall leaving the tavern later on that evening? A. I do not.

Q. Do you recall what you were doing before you left the tavern? A. Playing shuffle-bowl.

Q. What time was that, do you recall? A. I don't recall.

Q. Do you recall whether it was evening or not at any time when you were in the tavern? A. No.

Q. You don't recall that. You recall what time Mr. Bombino came on shift? A. No.

Q. You don't recall that? A. No.

Q. We have a gap, is that correct, and the next thing you recall is you are being arrested by some officers, is that correct? A. It turned out I was being arrested, yes.

Q. You recall that very vividly?

Mr. Kinnie: May I interrupt just a moment. Mr. Haynes, if you will take your hand down from your face—I can't hear.

Mr. Tracy:

Q. You recall very vividly crying in a car, is that correct? A. Yes.

Q. You have no trouble remembering that at all? A. No.

224 Q. In fact, you stated that you were absolutely certain or certain of those particulars, is that correct? A. Yes.

Q. You have no difficulty recalling going to the police station; in fact, placing your hands on a desk? A. I can remember that.

Q. Those are very vivid in your recollection, is that correct? A. Yes.

Q. In fact you believe that you can recall very vividly Officer Pike? A. He is the only police officer that I can recall that night.

Q. Prior to that time had you ever seen Officer Pike? A. Well, I might have seen him somewhere.

Q. Did you know Officer Pike? A. No.

Q. But you can recall his face that particular night? A. I am pretty certain.

Q. You can recall talking to two officers, is that correct? A. I am pretty sure it was two.

Q. That is what you testified to, Mr. Haynes? A. Yes.

Q. And you recall that particular night, December 19th, asking Officer Pike several times for a lawyer, is that correct? A. Yes, a lawyer and to call my wife.

Q. What did you mean, Mr. Haynes, at a later time in your direct examination when you stated that you weren't

ready for a lawyer yet because you didn't know of
225 any particular lawyer in town? What lawyer did you have in town when you were talking to Mr. Pike? A. A lawyer.

Q. A lawyer? A. Yes.

Q. What did you mean on direct examination then that you didn't particularly want a lawyer at the time, that you wanted to talk to your wife? A. Because I am not loaded with money.

Q. Yes. A. I didn't want to obligate myself for having an attorney come down to the jail and also my wife calling another attorney.

Q. I see. So you wanted to call your wife, is that correct? A. That is right.

Q. Do you recall all this mental process going on in your head this particular night? A. I have a fair recollection of it.

Q. You just testified to it? A. Yes.

Q. In fact you have also testified on direct examination that you did not want to call an attorney, isn't that correct? A. I didn't particularly want to call an attorney after I had decided well, maybe, two attorneys would show up.

Q. Now, Mr. Haynes, you also recall very vividly a lineup, is that correct? A. Well, I recall it, yes.

Q. In fact you recall the lineup and you recall
226 your position and the position of your brother in the lineup? A. I recall my position. I wasn't absolutely certain of my brother's position in the lineup.

Q. You testified that you thought he was in the opposite end of the line? A. I thought he was.

Q. You recall being asked to take off your cap that particular night? A. Yes.

Q. Did you have any difficulty recalling that? A. No.

Q. In fact, the only thing we have any difficulty recalling is about a one or two hour period during the course of the evening, isn't that correct? A. That is right.

Mr. Kinnie: Objection. It is argumentative.

The Court: Overruled.

Mr. Tracy:

Q. And it was during that period when this robbery took place, isn't that right? A. That is what is charged.

Q. You heard that testified to? A. By whom?

Q. By all the witnesses. A. Oh.

Q. Isn't that correct? A. Yes.

Q. In fact, Mr. Haynes, you testified that on December 19th that you can recall that you were in a room for three, four or five minutes. Those are your words, again. You can recall that time, is that correct, before your
227 brother Keith came in? Those are your words, Mr. Haynes. A. That isn't what I meant because I was interrogated for quite some time before I was put in the lineup.

Q. You recall that you were in the room? A. By myself for two or three minutes—a short time.

Q. You can recall very vividly it was a short time? A. I know it wasn't all night.

Q. You can recall that you were in a particular room for fifteen or twenty minutes? That is also your testimony, is that correct? A. Yes.

Q. That is also on December 19th? A. Yes.

Q. The day when you drank all this beer, isn't that correct? A. Yes.

Q. Mr. Haynes, have you ever denied the truth of these statements to anybody? A. No.

Q. Isn't it true when you gave a statement to Carroll Gray in the prosecutor's office that at the time you refused to sign that statement and in actuality the only reason for it was that you wanted to talk to your wife first, as you testified in your direct examination? A. Would you repeat the question?

Q. Wasn't the only reason you didn't sign this statement was because you wanted to talk to your wife before you signed it? You have testified to that on direct examination. A. That was one of my reasons.

228 Q. And isn't it true, Mr. Haynes, that in the presence of Officer Guthrie and Officer Murphy of the Sheriff's Office you attested to the truth of these statements? A. I don't remember that.

Q. You don't remember that? A. By attesting.

Q. You were asked if it was true by Carroll Gray and you said the statement was true and at that time Officer Murphy and Officer Guthrie of the Sheriff's Department were present in the room? A. Well, that could be. I won't say one way or the other absolutely.

Q. And isn't it true, Mr. Haynes, that the statement that you gave to Carroll Gray in substance was exactly the same as the statement that you had given the previous day to the officers? A. I tried to make it as close as I could.

Q. Because it was true, isn't that correct? A. No.

Q. No? Well, Mr. Haynes, by your own volition now you have attested to—I will ask you the basic question first: Have you ever been convicted of a crime? A. Yes.

Q. Your answer is "Yes", and you have testified to a a conviction of robbery; you have testified to a conviction of breaking and entering a building. Is there anything else now, Mr. Haynes, that you have not testified to? Have you ever been convicted of any other crime? A. Drunken driving.

Q. Is there any other crime you have ever been
229 convicted of? A. (No response.)

Q. I will ask you this: September, of 1950, did you plead guilty to taking a car without the permission of an owner in Minnesota? A. Oh, yes.

Q. In September, of 1950, did you plead guilty to breaking jail? A. Yes.

Q. Do you recall, Mr. Haynes, in a statement taken by Carroll Gray, December 20, 1957, the following questions and answers being asked—the following questions asked you and the following answers given:

"Q. After you got in there who talked to the proprietor?

"A. I guess I did. I don't remember Keith saying anything.

"Q. What did you tell the man?

"A. Well, I asked him for a half dollar's change.

"Q. What did he do?

"A. He opened the till to get money, the change, and then I told him it was a stickup and give me the money."

Do you recall making those answers to those questions? A. Yes.

Q. Do you recall making or giving those same answers to the same almost identical questions when asked by Detective Peck the previous day? A. No, I don't.

230 Q. You don't recall giving those exact answers? A. Not exactly word for word, no.

Q. In substance the same? A. In substance, about, yes.

Q. And do you recall making the same oral admissions at various times to various officers prior to the time it was reduced to writing? A. What do you mean by "various other officers"?

Q. Detective Cockburn, at the time you were interrogated, before a stenographer was brought into the room? A. Before the stenographer was brought in?

Q. Yes. A. No.

Q. You don't recall that? This 1952 Ford that is registered in your name, do you have any idea how it came to be found at a location immediately adjacent to a service station and home owned by Mr. and Mrs. Shane? Do you have any idea how that car happened to be found there? A. I do not.

Q. Did you loan your car to anybody? A. No, not that I remember.

Mr. Tracy: I have no further questions.

Mr. Kinnie: No further questions.

The Court: Step down. We will take our morning recess now.

(Witness excused.)

(After recess.)

The Court: You may proceed.

Mr. Kinnie: I will call Al Bombino.

231 ALBERT H. BOMBINO, called and sworn as a witness in behalf of the defendants, testified as follows:

Direct Examination

By Mr. Kinnie:

Q. Would you state your name to the Court and jury, please? A. Albert H. Bombino.

Q. And where do you reside, Mr. Bombino? A. 2206 East Bridgeport.

Q. That is here in Spokane? A. Yes.

Q. What business are you in? A. Own a tavern.

Q. You own a tavern? A. Yes, sir.

Q. Which one? A. Gay Tavern.

Q. Is that the tavern that is only known as the Gay Tavern? A. Yes.

Q. Where is that located? A. 116 North Stevens.

Q. Are you the sole owner of that tavern? A. No, sir.

Q. Who else owns it? A. I have two partners, Pete Bombino and Bruno Bartow.

Q. Is Pete Bombino your brother? A. Cousin.

Q. He is your cousin. Now how long have you
232 been in the tavern business, Mr. Bombino? A. I have been there twelve years.

Q. And are you acquainted with Raymond and Keith Haynes? A. Yes, sir.

Q. And they are the two gentlemen seated here at the counsel table? A. Yes.

Q. What would be the nature of your acquaintanceship with them? A. Well, customers in the tavern.

Q. Are they in there frequently? A. The last month and a half or two they were in there pretty regular, yes.

Q. When you speak of the last month or two, are you referring to before last December, is that correct? A. Yes, sir.

Q. Now on December the 19th, of 1957, what shift were you working? A. Night shift.

Q. And when did you go to work? A. Four.

Q. Four o'clock in the afternoon? A. Yes, sir.

Q. Do you recall whether or not on that date when you went to work the Haynes brothers were in the tavern? A. They were.

Q. And would you tell the Court and jury approximately what time they left the tavern? A. Well, to my
233 knowledge I believe they left between I would say 5:30 and six o'clock—around there.

Q. In the afternoon? A. Yes, sir.

Q. And did you see them any more that evening? A. No.

Q. I will ask you, Mr. Bombino, would a person drinking three stubbies of beer per hour, would that be considered heavy drinking?

Mr. Tracy: Objection.

The Court: Sustained.

Mr. Kinnie:

Q. Do you know of your own knowledge how much beer the Haynes brothers were drinking during the time you saw them? A. I wouldn't have no idea.

Q. Who worked at the tavern before you went to work? A. Pete Bombino.

Q. And where is Pete Bombino now? A. He is here in town.

Q. Is he ill? A. Well, he was last night. I never seen him this morning. I don't know how he is feeling this morning. He went home early last night. I went up to check on him. He was sleeping. He hadn't come down when I left this morning.

Mr. Kinnie: No further questions.

Cross-Examination

By Mr. Tracy:

Q. Mr. Bombino, on December 19, 1957 you state that you saw Ray and Keith Haynes both at your tavern, is that correct? A. Yes.

234 Q. And during the time that you saw these two men there did you have a chance to talk to either of them? A. Oh, yes.

Q. To both of them? A. Yes.

Q. Did you have a chance to observe their manner of walking that particular evening? A. Well, it seemed to be all right.

Q. And their speech, did you have a chance to observe their speech? A. Well, they talked to me, yes.

Q. Was their speech normal or abnormal? A. Well, they—I didn't really notice too much difference in it.

Q. Their speech appeared to be O. K., is that correct? A. Yes.

Q. Mr. Bombino, did you have any conversation with either of these brothers concerning money? A. Yes.

Mr. Kinnie: I object, if your Honor please. This is beyond the scope of direct. If he wants to call Mr. Bombino as his own witness—

Mr. Tracy: If the Court pleases, I feel that Mr. Kinnie has put this witness on the stand for the purpose of relating everything that he saw and observed this particular evening. If I can recall, he even asked the witness if he can recall how much beer these men had to drink and so on and so forth. I think it certainly opens the door to other things he may have seen.

The Court: I sustain this as being beyond the
235 scope of the direct examination. He hasn't testified to anything except those men were in there.

Mr. Tracy:

Q. You say they left at approximately six o'clock p. m., 5:30 to six p. m.? A. To my knowledge.

Q. And at the time they left their condition was apparently normal, is that correct? A. Well, they had been drinking.

Q. Their speech and walk was normal as far as you can recall? A. It seemed all right to me.

Mr. Tracy: I have no further questions.

* * * * * * * * * *

239 ROBERT L. SMITH, called and sworn as a witness in behalf of the defendants, testified as follows:

Direct Examination

By Mr. McCabe:

Q. Sergeant Smith, state your full name, please. A. Robert L. Smith.

Q. What is your address, where do you reside? A. 3504 West Second Avenue.

Q. Keep your voice up, please. Are you stationed with the Air Force here? A. Yes, I am.

240 Q. What unit are you with? A. 84th Materiel Squadron at Geiger Field.

Q. How long have you lived in Spokane? A. Approximately 22 months.

Q. Do you know the defendant, Ray Haynes? A. Yes.

Q. Do you also know the defendant, Keith Haynes? A. Yes.

Q. How long have you known the defendant, Ray Haynes? A. Oh, 22 months.

Q. In what capacity? A. Next door neighbor.

Q. He lives next door to you? A. Yes.

Q. Has your contact been with him only socially, I mean after working hours and so forth? A. Yes.

Q. Now I would like to ask you a question: Whether or not you know his reputation in the community as being

a peaceful and law-abiding citizen? Strike that question, please.

Q. On the day of December 19, 1957 did you have occasion to hear or see defendant, Ray Haynes? A. Yes, I did.

Q. Would you tell us a what time, please? A. Well, it was approximately 1:30 in the afternoon in my home.

Q. In what manner did you see him? A. First I had a phone call from him.

241 Q. You received a telephone call from him? A. Yes.

Q. May I ask what was the nature of his conversation with you? A. He was calling to see if my wife and I were ready to go. We were ready to go downtown. He came home to pick up his daughter.

Q. His daughter was at your home at that time? A. Yes, she was.

Q. You were speaking to him on the phone, Sergeant Smith. Did you notice anything unusual in his manner of speaking? A. Well, it was quite slurred, dragging out his words.

Q. Now did you see the defendant, Ray Haynes, later that same day? A. Yes, about half an hour later.

Q. That would place it at about what time? A. Shortly before two o'clock.

Q. Just before two o'clock? A. Yes.

Q. He came into your home, did he? A. Yes, he did.

Q. And you there saw him? A. Yes.

Q. Did you see him walk? A. Yes, I did.

Q. In what manner did he walk at that time? A. Well, staggered through the kitchen, you might say.

242 Q. Did he speak at that time also? A. Yes.

Q. And how did he sound to you? A. Well, he sounded to me as if he had been drinking.

Q. His speech was normal or unusual? A. It was unusual.

Q. Unusual? A. Yes.

Q. I just have a few more questions here, Sergeant. Back to the subject of his reputation: Do you know his reputation for being a peaceful and law-abiding citizen? A. I don't know. I can't say. I have never had any trouble with Haynes.

Q. Go ahead. A. I never had any trouble or heard of any trouble of Mr. Haynes.

Mr. Tracy: If the Court please, I think that question should be answered yes or no. I don't like to interrupt.

The Court: The answer is correct, Mr. Tracy. It is admissible. The Supreme Court has held you may say that you haven't heard anything against a man; that that is some evidence of character.

Mr. Tracy: Very well.

The Court: So that may stand.

Mr. McCabe:

Q. Just another question, Sergeant: Do you know his reputation for truth and veracity in the community? A. No, I don't.

243 Q. Have you heard anything against such? A. No, I haven't.

Q. Character or trait? A. No.

Mr. McCabe: That is all I have.

Cross-Examination

By Mr. Tracy:

Q. Sergeant Smith, is that correct? A. Yes, sir.

Q. Do you know which defendant now it is? Is it Raymond Haynes that you remember? A. I know Raymond—I know both.

Q. You know Raymond, primarily? A. Yes.

Q. You live in the same duplex? A. Yes.

Q. Adjoining duplex? A. Yes.

Q. Are you both renting those duplexes? A. Yes, renting.

Q. On this particular day in December, December 19, 1957, it is my understanding that you and your wife were baby-sitting, is that correct? A. Yes.

Q. And when was the baby left with you, do you recall that, Mr. Smith? A. She was left with my wife before I came home in the morning.

Q. Before you came home in the morning? A. Yes.

Q. During the course of that day the baby was
244 taken from you at approximately, you said, around two o'clock? A. Right around two o'clock.

Q. Right around two o'clock, and did you of your own

knowledge, know who kept care of the baby from that point on? A. As far as I know, it was Raymond.

Q. Raymond took the baby from you? A. Yes.

Q. Now he took the baby from you. Did he carry the baby or what? A. Yes.

Q. And he took it from your apartment? A. Yes, he did.

Q. Did you feel any concern for the baby, Mr. Smith? A. I wasn't too worried because I thought he was going to stay home then.

The Court:

Q. What is that? A. I wasn't worried about the baby because I figured he would stay home with her until it was time to pick up his wife.

Mr. Tracy: I have no further quetsions.

The Court: That is all, Sergeant.

Mr. McCabe: I have one more question:

Q. Sergeant Smith, how long have you known Keith Haynes? A. Since August, of last year.

Q. Just since August of last year. That is all I have.

The Court: You may be excused.

(Witness Excused.)

245 MRS. ROBERT SMITH, called and sworn as a witness in behalf of the defendants, testified as follows:

Direct Examination

By Mr. McCabe:

Q. Mrs. Smith, would you give your full name to the Court? A. Mrs. Robert Smith.

Q. And your address? A. 3504 West 2d Avenue.

Q. You are the wife of Sergeant Robert Smith? A. Yes.

Q. Mrs. Smith, are you a recent inhabitant of the United States? A. I am not a citizen yet.

Q. You are not a citizen yet? A. No.

Q. How long have you been a resident in the United States? A. Eighteen months.

Q. And you moved from where? A. From Trier, Germany, to Spokane.

Q. You have lived in Spokane how long? A. For seventeen months. One month I was in California.

Q. Now do you know the defendant, Raymond Haynes, in this case? A. Yes.

Q. You also know the defendant, Keith Haynes? A. Yes.

246 Q. Would you point them out in relation to where they are sitting? A. This is Raymond and this is Keith (indicating).

Q. Thank you. Now how long have you known the defendant, Ray Haynes? A. Since I live in Spokane.

Q. And how do you know him? A. We are neighbors. We lives in a duplex. I know him good.

Q. You live next door to him? A. Yes.

Q. All right, now turn your attention to the day of December 19th. Would you relate whether or not you saw the defendant, Ray Haynes, that day? A. Yes, I saw him.

Q. And what time? A. Around two o'clock. I take care of his daughter, his little daughter, and he came to pick her up because I wanted to go downtown and do some shopping.

Q. Was that the first time you saw him that day? A. Yes.

Q. He came into the house and how did he appear to you? A. He was drinking.

Q. He had been drinking? A. Yes.

Q. Did he talk to you during that time? A. Yes, he just took his daughter and I told him I should take her out because he was awful strong and my whole house smelled alcohol, and he said he could take her.

247 Q. Did his speech sound unusual or normal to you at that time? A. Well, I don't remember that but I know he was drinking an awful lot.

Q. Did you notice him walk while he was in the house? A. Yes, when he picked the little girl. He was swinging from one side to the other.

Q. Was that just playing with the little girl? A. He picked her up. I was all dressed to go downtown and we were in a hurry and he told me to get a Christmas tree. He wanted to get a Christmas tree.

Q. Did you leave the house prior to when he left? A. They left before me.

Q. They left before you? A. Yes.

Q. Did they state anything to you when they left? A.

He just wanted to get a Christmas tree. That is all, and he left. He would go and get a Christmas tree.

Q. Is that the last you saw of him that day? A. Yes, when he drove away in the car with his brother.

* * * * * * * * * * *

250 GEORGE D. HAYNES, called and sworn as a witness in behalf of the defendants, testified as follows:

Direct Examination

By Mr. Kinnie:

Q. Now would you state your name to the Court
251 and jury? A. George D. Haynes.

Q. Mr. Haynes, while you are testifying keep your voice up so every one can hear you. A. Yes, sir.

Q. How old are you, Mr. Haynes? A. 63.

Q. And you are the father of Keith and Raymond Haynes, is that correct? A. Yes.

Q. Where do you live at the present time, Mr. Haynes? A. 3504 West 2d, Spokane, Washington.

Q. Is that Raymond's home? A. Yes.

Q. Directing your attention now to December 19th, of 1957, do you recall going anywhere with the two boys on that day? A. Yes, sir.

Q. Where did you go? A. We took Mrs. Haynes down to work in the neighborhood of eight o'clock. We stopped over at the Gay Tavern. We were there a while and while there I left and went on an errand.

Q. You say you left the Gay Tavern and went on an errand? A. Yes, sir.

Q. When you left the Gay Tavern were the two boys still in the tavern? A. Yes, sir.

Q. What were they doing there? A. Oh, they were at the bar.

252 Q. They were drinking? A. Yes.

Q. Did you then return to the Gay Tavern? A. Yes, sir.

Q. About what time? A. Oh, I was gone about an hour. It was perhaps around eleven o'clock I got back—somewhere in that neighborhood.

Q. Were the boys still there then? A. Yes, sir.

Q. And were they still at the bar? A. Yes, sir.

Q. Were they still drinking? A. Yes, sir.

Q. Now did you have occasion to leave the Gay Tavern with the boys after that? A. I did.

Q. When was that? A. Well, we left shortly after I returned and we went home.

Q. Well, you returned what; around eleven, you say? A. Oh, it was more like around twelve when we got home, in the neighborhood of that. I kept no time as to the time of day.

Q. When you got home what did you do then, if anything? A. Sat around a while and then we picked up the baby from the baby-sitter.

Q. And then what did you do? A. We took the baby with us and went down and got a Christmas tree,
253 went around on the boulevard and got some meat from the locker and went home.

Q. On the boulevard? What are you referring to? A. Northwest Boulevard.

Q. Do you have a locker on Northwest Boulevard? A. Yes, sir.

Q. All right, then you went on home, again? A. Yes, sir.

Q. Do you know approximately what time you got back home? A. Well, I know approximately what time it was. It was between two and three.

Q. All right, and what happened then? A. The boys left to go get some cigarettes and I kept the baby.

Q. The boys? You mean Kejth and Raymond? A. Yes.

Q. In the car? A. Yes, sir.

Q. When did you next see them? A. The first time I visited them in jail.

Q. They didn't come back any more that day? A. No, sir.

Q. You didn't know where they were going? A. No, sir.

Q. At the time they left to go after cigarettes did you have occasion to observe their talking? A. Yes, sir.

Q. And with respect to Raymond Haynes, first, was
254 his manner of talking normal? A. No, sir, it wasn't.

Q. What did you see in that regard? A. Well,—

Q. Or hear? A. When he is sober he is fairly quiet, joking, full of fun, but he was more on the excited side and always in a hurry.

Q. Is it your testimony then that his speech was different just before they left for the cigarettes? A. Oh, yes, sir.

Q. How about Raymond walking? Did you see him walk? A. Yes, I saw him walk.

Q. Did he walk all right? A. He got around all right.

Q. Now with respect to Keith Haynes, did you notice anything with respect to his speech? A. Yes, sir.

Q. What was it? A. Well, it was a good deal on the same order as Raymond's. Keith is a very quiet sort of a chap and sober and when he isn't, he is just as much the other way. He was pretty talkative.

Q. Well, his condition of speech just before they left for these cigarettes, would it be your testimony that it was other than normal? A. Yes.

Q. Had you been drinking with the boys that day down at the Gay Tavern? A. I drank some in the morning, yes.

Q. Do you know how much you had to drink?

255 A. I believe I had two bottles of beer that morning; one before I went on the errand and one when I came back.

Q. Do you, of your own knowledge, know how much the boys were drinking there at the Gay Tavern when you were there with them? A. Well, of course I didn't count them, but—

Q. That is all right. A. —they drank several more than I did by far.

Q. By the way, Mr. Haynes, you receive a pension from World War I, is that correct? A. I do.

Q. How much is that? A. $78.75.

Q. A month? A. Yes.

Mr. Kinnie: No further questions.

Mr. Tracy: I have no questions.

The Court: Step down.

(Witness excused.)

• • • • • • • • • • •

259 KEITH E. HAYNES, a defendant herein, called and sworn as a witness in his own behalf, testified as follows:

Direct Examination

By Mr. Kinnie:

Q. Would you state your name to the Court and jury, please? A. Keith E. Haynes.

Q. And how old are you, Keith? A. 29.

Q. And where do you reside? A. 3504 West Second Avenue, South.

Q. Is that the home of Raymond Haynes, your brother? A. Yes, it is.

Q. How long have you been living there with Raymond Haynes? A. About the second of August.

Q. 1957? A. Yes.

Q. Where did you live before that? A. 4707 Emerson Avenue, Minneapolis, Minnesota.

Q. And were you living with any one at that address? A. I was living with my folks.

260 Q. And then, as I understand it, in August of 1957 you came out here to Spokane? A. Yes.

Q. State whether or not you came out by yourself or with some one. A. I came out with my father, George D. Haynes.

Q. That is the same Mr. Haynes who testified this morning? A. Yes, it is.

Q. Now moving to December the 19th, of 1957, state whether or not on that date you had occasion to go anywhere with Raymond Haynes? A. Yes, I went with him and he took his wife down to work.

Q. What time was that? A. Approximately right around 8:30 or 25 after.

Q. Who went along on this trip? A. My father, brother, and my brother's wife.

Q. That is Esther Haynes? A. Yes, it is.

Q. And then where did you go? A. Dumped her off and circled around the block and went up and parked by the Gay Tavern some place.

Q. Do you know where the Gay Tavern is located? A. I don't know the street, but I can find it, but I don't know the street number.

Q. What did you do at the Gay Tavern? A. Started drinking and playing a bowling machine.

Q. How long were you at the Gay Tavern? A. Right around noon or a little after.

261 Q. What were you drinking there? A. Beer, I mean stubbies—bottled beer.

Q. And you were there until around noon, sometime around the noon hour? A. Little after noon.

Q. Then what happened? A. Ray called the neighbor and we went out to the house and he got his daughter next door at the neighbor's.

Q. And at that time you had been drinking at the Gay Tavern from, what time did you get to the Gay Tavern, do you remember? A. I would say about five minutes after we left Esther off.

Q. What time did you leave Esther out? A. It would be around 8:25 or 8:30.

Q. And then from about quarter of nine, would you say? A. Yes.

Q. Until around noon you were at the Gay Tavern? A. Yes.

Q. Do you know how many bottles of beer you yourself had to drink in that time? A. No, I don't.

Q. Do you have any idea? A. I know I was drinking all the time. I had one in front of me all the time.

Q. When you emptied one stubbie you would buy another one, is that it? A. Yes.

262 Q. All right, now when you went home and got the small child, then what happened? A. Ray went next door—me and my father, we made a sandwich. We had some beer left and I don't know how many we drank—one or two—and then we went down and got cigarettes and we didn't go back.

Q. That was there in— A. First, we went to the meat locker and made a circle.

Q. The drinking of the beer you are testifying to now, that was where? A. That was at the house.

Q. And then what happened, if anything? A. We all got in the car and went to the locker.

Q. That is the one that has been testified to on Northwest Boulevard? A. Yes.

Q. And then where did you go? A. I believe we went

back home. I don't know how long we were there or anything. Then we decided we wanted to get some cigarettes and after getting the cigarettes we figured we would go down and get some more beer.

Q. Who are you talking about now? A. Me and my brother.

Q. You and Raymond Haynes? A. Yes.

Q. Where was your father? A. We left him at home.

Q. And what was he doing at home? A. Baby-sitting.

Q. Had your father stayed with you at the Gay
263 Tavern that morning? A. Yes, for a period there and then he went some place.

Q. Then he wasn't there all the time? A. No.

Q. All right, you stated that you decided then to go down and get some more beer. Where did you go? A. Back to the Gay Tavern.

Q. Do you know approximately what time you got back there? A. Oh, I don't think it was over an hour and a half since we left before we were back down there.

Q. Well, could you peg it at an hour? Two o'clock or 2:30, do you have any idea? A. I don't know exactly what time we left.

Q. O. K., you went down to the Gay Tavern and how long did you stay there that time? A. We started drinking and the last thing I remember was playing the bowling machines, started playing for drinks.

Q. What time was that, do you know? A. No, I don't.

Q. Was it dark outside at that time? A. I don't know.

Q. All right, now will you tell the Court and jury in your own words what happened after that? A. Well, it was just before that I remember when the motorcycle officer picked me up.

Q. All right, go ahead. A. Well, I fell. I must have fell because I got up. I didn't know where I was. I started staggering down the alley and I seen a guy
264 standing out in the open there. So I walked right up to him and that was him.

Q. That was whom? A. The officer.

Q. The police officer? A. Yes, the motorcycle officer.

Q. All right, then you were placed under arrest? A. Yes.

Q. What happened then? A. Well, as far as I understand it he made me put my hands on the car.

Q. Not what you understand, what do you remember happened? A. I remember being put in the squad car.

Q. Put into a squad car? A. Yes.

Q. That is a different car than this motorcycle officer you are talking about? A. Yes.

Q. All right, what happened in the squad car? A. We got in. He wanted my identification or something.

Q. Who? A. This—I don't know if it was the officer or another city defective. I don't know who it was in the car with me.

Q. All right. A. He wanted my identification. I told him I couldn't get it. My hands were handcuffed behind me and we got into a kind of a hot argument.

265 Q. With the police officer? A. Yes.

Q. State whether or not the police officer or officers right after that took you some place. A. Yes, down to the city jail.

Q. All right, state what happened when you got to the city jail. A. Well, as far as I can remember I was there. He told me to stand some place in there and I seen my brother walk by. They took him to another room and pretty soon they took me to a room. I don't know if that was before the lineup or after the lineup.

Q. Go ahead. A. Well, I don't know what you call it—anyway, he talked to me about the robbery.

Q. You mean interrogated? A. Yes.

Q. Asked you questions? A. Yes.

Q. All right, and do you remember who was asking questions? A. No, I do not.

Q. Do you remember what answers you made to the questions? A. If I recall right I did not make no answers.

Q. You what? You didn't say anything? A. No, I did not say anything.

Q. Now this time that you are talking about, is this the time that you answered you weren't sure it was before the lineup or after the lineup? A. Well, I was

266 interrogated three times, I believe, down there.

Q. That night? A. No, I believe it was once that night and twice the next day.

Q. All right, do you remember or state whether or not you remember being placed in jail that night. A. Vaguely.

because I wanted my glasses and they wouldn't let me have them.

Q. Who had them? A. I had them. Some detective gave them to me after I got to the police station. Then when I went upstairs they took them away. They wouldn't let me have them.

Q. Well, when you were booked into the city jail do you know how you were booked? A. No, I don't.

Q. By that I mean do you know on what charge you were booked? A. No.

Q. And after you were booked in the jail nothing else happened that night, is that right? A. Oh, yes, after we were booked?

Q. Yes. A. I don't know if they questioned us again or wait until morning.

Q. Were you booked at the same time your brother was booked? A. Yes.

Q. Well, the next morning then, on the 20th, state whether or not you were again interrogated? A. Yes,
267 I was.

Q. And by whom? A. Well, there were two detectives—one looked like Pike. I wouldn't say if it was him or not; a tall guy, and another guy shorter than he was.

Q. On the morning of December 20th, state whether or not you were handed a statement to read? A. Yes, I was, prior to that.

Q. Go ahead. A. Well, prior to that I was questioned before that, too, before I got the statement to read.

Q. All right, tell it in your own words. What happened on December 20th? A. First, they brought me down pretty early and as far as I can recall they questioned me for about around an hour. Then they took me back upstairs and then I don't know how long I was up there. They called me back down again and started interrogating me again, and at that time, see-sawing around, I said I wouldn't sign nothing until I saw my brother's. My brother told me in the lineup that he made a statement, to call his wife.

Q. Go ahead. A. So he said we could do that or something to that effect and I said, "I won't sign one, I won't say anything until I seen his first." They said they couldn't because it was in shorthand. So we sat there a while and they started bringing in a couple of pages at a time.

Mr. Tracy: If the Court please, I am a trifle confused. Is he testifying he saw his brother's statement at this time?

268 Mr. Kinnie: Yes or what was purported to be his brother's statement.

Q. Do you know of your own knowledge whether that was your brother's statement or not? A. No, I couldn't swear to it.

Q. Was your brother in the room with you? A. No.

Q. All right, state whether or not you on that date, December 20th, signed the statement that is here in evidence. A. Yes, I did.

Q. And after you signed the statement were you taken over to the prosecutor's office? A. Well, we went up to some Judge in the City to be bound over, then we came over to the County.

Q. That would be Judge Lower in the Police Court? A. I don't know which judge it was. Then we came over to Gray's office, prosecutor Gray.

Q. What happened there? A. Ray wanted to make a call and he couldn't do it. He wouldn't do it or something. Anyhow, we made another statement to Gray, then they would accept us downstairs to the jail downstairs, and I don't know what date it was when they called us back up and wanted us to sign them.

Q. And call you back to Carroll Gray's office? A. Yes.

Q. And did you at that time sign the statement? A. No.

Mr. Kinnie: No further questions.

269 Cross-Examination

By Mr. Tracy:

Q. Keith, on the day in question, December 19, 1957, you state that approximately 8:30 in the morning you went with your brother and father and your brother's wife, is that correct? A. Yes.

Q. Took her to work? A. Yes.

Q. And approximately what time did you arrive at the Gay Tavern, do you recall? A. Well, it must have been twenty to nine, quarter to nine—something like that.

Q. Around 8:45, is that right? A. Yes.

Q. And you spent approximately how long at the Gay Tavern? A. Right around noon or a little after noon.

Q. Little after noon? A. Yes.

Q. At that time, Keith, were you buying beer yourself? A. Yes.

Q. You had some money of your own, is that correct? A. Yes, I didn't have any when I went in but I got some after I was in there.

Q. You got some in there? A. Yes, from a guy in there.

Q. You were there approximately how long? A. Well, 8:45, about three and a half or four hours.

Q. Then you left the beer tavern and went some
270 place else. Where was that? To your home, is that correct? A. Yes.

Q. At that place you made a sandwich, is that right? A. Yes.

Q. Then you again left the home and went to a meat locker? A. Yes.

Q. What was the purpose of that? A. To get some meat for supper.

Q. To get some meat for supper that evening, is that correct? A. Yes.

Q. Who got that meat out of the locker, do you recall? A. Gee, I couldn't recall. Probably all of us went in. I couldn't say.

Q. And then did you go back home at that time? A. Yes, as far as I remember.

Q. Left the baby in the care of your father, is that correct? A. Yes.

Q. Did you ever see your father again that day? A. No.

Q. Then you went from there back down to the Gay Tavern and engaged in more drinking, is that correct? A. Yes. Can we go back to this locker deal? What do you mean if I haven't seen my father since?

Q. After you left your father at home with the baby did you see him any more that day? A. No.

Q. You went back to the tavern and drank more
271 beer and did some bowling, is that correct? A. Yes.

Q. Do you recall approximately how long you were in the tavern the second time you went back? A. No idea at all.

Q. No idea at all? A. No.

Q. So you have no idea how much beer you drank that afternoon? A. No.

Q. You have no idea how much beer your brother drank that afternoon? A. No, we kept a pretty good pace between ourselves.

Q. You don't recall anything from the bowling game that would indicate how much beer you had from there on? A. No.

Q. You don't know how much beer you had? A. When you drink beer you don't write it down.

Q. Did you ever refuse beer at any time? A. No, I don't believe so, not that day.

Q. You know you weren't refused, isn't that correct? A. What do you mean?

Q. You never were refused beer at this tavern, is that correct? You said you got one bottle right after the other. A. Yes, so long as we were paying for it.

Q. That is what I am talking about. On December 19th were you ever refused beer that day? A. Not that I recall.

Q. The next thing you recall is a motorcycle officer
272 picking you up, is that right? A. Yes.

Q. When was that that you were picked up? A. About that time. I didn't know where it was.

Q. You learned later it was right near the scene of the holdup, isn't that correct? A. Yes.

Q. Now Keith, at the time you were picked up was there a car in that vicinity that you recognized? A. No.

Q. You never saw your brother's car parked there? A. I did after I got up to it.

Q. And where was that parked at? A. On one end of the alley.

Q. And that was near the scene of the holdup also, is that correct? A. That is what I heard afterwards.

Q. You told the officers it was your brother's car, isn't that right? A. Yes.

Q. Do you have any idea how that car got there? A. No, I don't.

Q. But you remember very vividly the officer standing in the alley and picking you up, is that right? A. Yes, I do.

Q. Prior to that you have no recollection at all? A. No, I don't.

Q. You have just a void prior to that time, is that right?

A. I don't know what you mean "void".

273 Q. You have no memory whatsoever from the time you bowled until the time the officer picked you up? A. No.

Q. Do you know, Keith Haynes, that this holdup occurred just a few minutes before you were picked up? A. I didn't know it at the time.

Q. You heard that testified to here? A. Yes.

Q. Now, in any event, you were taken to the police station and you remember the officer picking you up? It turned out later it was the motorcycle officer? A. I couldn't identify him if I saw him in court.

Q. You remember the motorcycle officer, after he picked you up, your memory has been restored? Your memory is restored that the motorcycle officer asked you, "Why did you pull this robbery?" and you remember making the statement to him, "What would you do if you were out of work?" A. No, I don't.

Q. You lost that too, is that correct? A. (No response.)

Q. In any event, you went to the police station and that night you never gave any statement, is that correct? A. I don't believe so, no.

Q. The next morning you made a statement? A. Yes.

Q. And, in fact, you made two statements—you were interrogated orally first, is that right? The officers talked to you first, is that correct? A. A couple of times, yes.

274 Q. And later a stenographer came in and reduced that statement to writing, is that correct, the shorthand notes? A. Yes.

Q. And then, isn't it true Mr. Haynes, that that statement was handed to you and that you read and initialed each page of that statement and signed it, isn't that true? A. Yes.

Q. Is everything contained in that statement a lie? A. I don't know.

Q. Are you a liar, Keith Haynes? A. No, I don't believe I am.

Q. On the following day or the same date did you make the identical statement to the prosecuting attorney, Prose-

cuting Attorney Carroll Gray? A. It is awful similar to it, yes.

Q. In substance, it was the same, is that correct? A. There might be a few words.

Q. Was that entire statement a lie? A. To my knowledge, I don't know.

Q. You know if you are lying or not. Was that statement a lie? A. No.

Mr. Tracy: I have no further questions.

Mr. Kinnie: No further questions.

The Court: Step down.

(Witness excused.)

Mr. Kinnie: I will call Mrs. Esther Haynes.

275 ESTHER LEAH HAYNES, called and sworn as a witness in behalf of the defendants, testified as follows:

Direct Examination

By Mr. Kinnie:

Q. Would you state your name to the Court and jury? A. Esther Leah Haynes.

Q. You are the wife of the defendant, Raymond Haynes? A. Yes, sir, I am.

Q. You have been in the courtroom throughout the trial? A. Yes, sir.

Q. And, for the record, where do you live? A. West 3504 Second.

Q. And do you have any children? A. I have one daughter.

Q. How old is she? A. She is 21 months old.

Q. Are you employed, Mrs. Haynes? A. Yes, sir, I am.

Q. Where are you employed? A. I am a cashier for F. H. Kress & Company, downtown.

Q. How long have you been so employed? A. Fourteen years and four months.

Q. And that is here in Spokane at the Kress Store? A. Yes, sir.

Q. You heard the testimony of your husband, Raymond Haynes, here that he has been unemployed since
276 sometime in October? A. Yes.

Q. And you have heard the other testimony that since sometime in August you have had your father-in-law and brother-in-law living at your home? A. Yes, sir.

Q. Approximately what is your salary at the Kress Store? A. Approximately $300.00 a month.

Q. And I will ask you whether or not George Haynes contributes any part of his pension check? A. Yes, sir, he does.

Q. What does he give? A. He gives it to me for our expenses.

Q. In other words, puts it into the community fund? A. Yes, sir.

Q. So that would raise your total earnings or money that is available to be spent for the livelihood of the family to what? A. Oh, I should say around $360.00, $365.00 or $370.00, somewhere in that neighborhood.

Q. Each month? A. Yes, sir.

Q. Now on December 19th, you heard the testimony of all the other witnesses? A. Yes.

Q. On December 19th were you taken to work by your husband? A. Yes, sir.

Q. And who else was in the car? A. Well, my husband, his brother and his father.

277 Q. And what time do you have to be at work? A. 8:30.

Q. And you were on time that day? A. Yes, sir, I was.

Q. And do you know where your husband and his brother and your father-in-law went after they let you out? A. No, I don't.

Q. Did you hear from them at all that day? A. I called my husband at home a little after one and asked him if he had gone and gotten the baby so the Smiths could go to town.

Q. And you talked to him a little after one that day? A. Yes, sir.

Q. Did you notice at the time you talked to him, did you notice anything peculiar with his speech? A. Yes, sir, I did.

Q. What was that? A. Well, the way, the manner in which he talked. I could tell he had been drinking and I had to ask him to hang up. He kept wanting to talk. I asked him to hang up. I had to go back to work.

Q. And since your husband had been unemployed had he been drinking more than usual? A. I wouldn't say that.

Q. Would he drink more than once a week, do you know? A. Well, yes, I think so.

Q. Would he ever spend an entire day in a bar, if you know? A. Well, I don't know.

278 Mr. Tracy: I don't like to object but I am compelled to object unless it is restricted to December 19, 1957.

Mr. Kinnie: I am trying to cover the period between the unemployment and December 19th.

The Court: Oh, proceed.

The Witness: Well, as far as my knowledge goes, I work every day. I don't know.

Mr. Kinnie: Q. When they left you off at the Kress Store that is the last you saw of them? A. Yes, sir.

Q. Now the next day, on December 20th, did you have occasion to call the city police? A. Yes, sir. I would say between 12:30 and 1:00 I called the police station and asked if they had a Raymond and Keith Haynes in jail and they told me they did. I asked him why and he told me to get my morning paper and read it. I identified myself as Mrs. Haynes and told him I was the wife and asked—he said, "You still get the morning paper and read it. It is all in there."

Q. And they wouldn't give you any information? A. They wouldn't give me any information.

Q. Did you ask them to take a message or deliver a message to your husband? A. No, I didn't.

Q. Now that was on Friday, the 20th? A. Yes, sir.

Q. On Saturday, the 21st, did you have occasion to go to the city jail? A. I did. I went there, I would say, close to twelve o'clock and got permission to go get the car.

279 Q. And at that time did you have any conversation with any of the officers in regard to it? A. I called Mr. Cockburn. He was the one I talked to.

Q. And did you have any conversation with him with regard to your husband? A. No, I did not.

Q. When was it, Mrs. Haynes, that you first saw your husband, Ray, after he had been arrested? A. The following Thursday, when I was permitted to visit him at the County Jail.

Q. That was one week from the date of the arrest? A. That is right.

Mr. Kinnie: I have no further questions.

Mr. Tracy: I have no questions.

(Witness excused.)

Mr. Kinnie: Defense rests, Your Honor.

Mr. Tracy: We have no rebuttal.

Both sides rest.

The Court: The instructions are all prepared, gentlemen. They just need to be separated and numbered and stapled and then I think that will take us about 20 minutes.

We will let the jury retire. The jury may retire until we are ready to proceed with argument.

(Whereupon, the jury retired and the following
280 proceedings were had in chambers.)

The Court: Does the State have any exceptions to the instructions?

Exceptions to Instructions

Mr. Tracy: If the Court pleases, the only instruction that I have any objection to whatsoever is Instruction No. 12, which refers to Subdivision 5 of Section R.C.W. 9.33.020, which, in effect, is a criminal statute, which makes it a misdemeanor for an officer having the custody of a person under arrest to refuse permission to such arrested person to communicate with his friends or with an attorney.

My objection is based upon the theory that this particular statute would have no connection with the voluntariness of the statements given in this particular case and that this part of the law is amply covered under Instruction No. 11, which refers to what a voluntary confession is and the manner in which it is to be considered by the jury.

The Court: Anything else?

Mr. Tracy: No.

• • • • • • • • • •

284 **Court's Instructions to the Jury**

(Omitted. Printed side page 11 supra)

* * * * * * * * * *

297 **Verdict of Guilty**

(Omitted. Printed side page 21 supra)

* * * * * * * * * *

298 **Judge's Certificate**

STATE OF WASHINGTON }
COUNTY OF SPOKANE } ss:

I, LOUIS F. BUNGE, Judge of the Superior Court of the State of Washington, in and for the County of Spokane, and the Judge before whom the above entitled action was tried, to-wit, the cause entitled STATE OF WASHINGTON, Plaintiff, v. RAYMOND L. HAYNES and KEITH E. HAYNES, Defendants, which is Cause No. 15910 in said Superior Court,

DO HEREBY CERTIFY:

THAT the matters and proceedings embodied in the foregoing Statement of Facts are matters and proceedings occurring in said cause and the same are hereby made a part of the record therein;

THAT the above and foregoing Statement of Facts contains all the material facts, matters and proceedings heretofore occurring in said cause and not already a part of the record therein, and contains all the evidence, oral and in writing, therein;

THAT no amendments were proposed to said Statement of Facts, excepting such as are embodied therein;

THAT the exhibits referred to in said Statement of Facts are directed to be, and hereby are, made a part of said Statement of Facts.

DATED this 4th day of September, 1958.

LOUIS F. BUNGE
Judge

---

299 (Reporter's Certificate to foregoing transcript omitted in printing)

300 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

Spokane Co. No. 15910

STATE VS. RAYMOND & KEITH HAYNES

Pltfs. Exhibit No. 6 Admitted

Statement of:	Raymond Leroy Haynes
Taken by:	Detective Peck
In the Presence of:	Detective Cockburn
Stenographer:	Dorothy Jeanes
Date:	December 20, 1957
Time:	10:45 am

Misc. #171007

Shanes Richfield Station
E2023 Wellesley Avenue

Q. Would you state your full name? A. Raymond Leroy Haynes.

Q. Where do you reside? A. West 3504 Second Avenue—Spokane.

Q. Are you married? A. Yes.

Q. Do you have any children? A. Yes. One

Q. What is your occupation? A. Sheet metal worker.

Q. Are you working now, Ray? A. No.

Q. When was the last time you worked? A. The middle of October.

Q. Just you and your wife live at that address? A. No, my father and brother, too.

Q. What is your father's name? A. George David.

Q. What is your brother's name? A. Keith Edward.

Q. Is Keith working at the present time? A. No.

Q. Is your father working? A. No.

Q. Regarding the incident that happened last night, Ray, would you please tell in your own words what took place from the time you left your home? A. Well, I went
301 to town about sometime before noon.

Q. With whom? A. My Dad and Brother—went to the Gay Tavern and drank beer until 1:30.

Q. 1:30 p.m.? A. Yes. Then went home and picked up

my daughter from the baby-sitter, my neighbor, and left the baby at home with my Father.

Q. Was your wife home at the time, Ray? A. No.

Q. Where was your wife? A. Working.

Q. Where does she work? A. S. H. Kress Company.

Q. Then what did you do? A. I went back up to the Gay Tavern.

Q. Alone? A. No, my Brother and I went.

Q. You and your Brother, that is Keith Haynes? A. Yes.

Q. And you started drinking beer again? A. Yes, until 8 o'clock, or better.

Q. During the time you entered the tavern, and left at 8 p.m., how much would you say you had to drink, Ray? A. Twelve or fourteen bottles of beer.

Q. Would you say that your Brother had about that much to drink? A. Yes.

Q. When you left the tavern, would you consider yourself drunk? A. Yah.

Q. While in the tavern, did you and your Brother talk about holding up a service station? A. I don't know if we did in the tavern or not. I really don't know.

302 Q. And after you got out of the tavern and got into you car—incidentally, do you own a car? A. Yes—well, the finance company and I.

Q. What kind of a car is it? A. A 1952 Ford.

Q. What is the color? A. Blue and white.

Q. Do you know the license number? A. No. It's a Washington "C" plate though.

Q. After you got into the car when you left the tavern, did you talk about holding up a place at that time time? A. Apparently we did.

Q. Did you talk about hold up a service station? A. We presumably did.

Q. And to get one that wasn't very busy? A. Yes.

Q. How long did you drive around looking for a service station that wasn't busy? A. I don't know.

Q. Approximately how long? A. About four or five miles we drove.

Q. What part of town were you driving in—do you remember? A. I imagine we went North.

Q. You went North first? A. Yes.

Q. Then, what happened? A. Can't I talk to the Prosecutor before I go any further with this statement?

Q. We just want to get this down for our records, and then we will go to the Prosecutor's Office and he will ask the same questions that I am. A. Well, we spotted
303 this Richfield station and it didn't look busy.

Where was it—do you recall? A. On the corner of Wellesley and Crestline.

Q. Do you know which corner? A. The Northwest corner.

Q. What happened after you got to the service station? A. (no answer)

Q. After you got to the service station, where did you park your car? A. In the alley.

Q. This alley is adjacent to the station? A. Yes.

Q. Does the alley run east and west, or north and south? A. Well, I figure it would be north and south.

Q. You parked the car in the alley. Then what happened? A. We went into the station.

Q. Both you and Keith together? A. Yes.

Q. Then, what happened? A. I asked the operator for four-bits change. When he opened the "till", I told him, "This is a stick-up, and to give us the loot and money", and he did.

Q. To whom did he give the money to? A. To me.

Q. Was that currency? A. Yes.

Q. What did you do with the money? A. I put it in my left coat pocket.

304 Q. Where was Keith at this time? A. In the station.

Q. What was he doing at the time? A. He was standing behind the operator.

Q. Did Keith say anything to him? A. I can't recall Keith saying a word.

Q. After you got the money, then what happened? What took place? A. We told him to get in the utility room.

Q. And he went? A. Yes.

Q. Did you lock him in? A. I don't know if Keith did—I left before him.

Q. Did you threaten the man? A. I didn't, and I didn't hear Keith say a word.

Q. Did you have a gun during this hold-up? A. No.

Q. Did Keith have a gun? A. No.

Q. You say that you left the station a few seconds ahead of Keith. Where did you go? A. I went up Crestline—I walked to Crestline.

Q. About half way up the block? A. Yes, about half a block.

Q. You stopped? A. Then I cut back over to the alley where the car was parked.

Q. Then what took place at that time? A. Then I saw Keith in custody.

Q. By whom? A. I don't know.

305 Q. By Police Officers? A. I don't know that—I think someone with a gun.

Q. You stated you saw a silhouette? A. Yes.

Q. This man was taking Keith to the car? A. Yes.

Q. Did you see him get into the car? A. No.

Q. Then what did you do? A. I waited in the alley a few minutes and then decided to go over to Division. I don't know where I was, or how far from the scene, when I met a police car. And they pulled over and shined their lights on me and asked me if I had seen a man about thirty-five.

Q. Two uniformed officers? Were they in a police car? A. Yes. I told them "no"—and I turned around and walked to the nearest residence.

Q. Why did you do that, Ray? A. I pretended that I was going in and go to bed. I thought that they would drive off.

Q. You went up to the door? A. Yes.

Q. Did you open the door? A. No.

Q. Were there lights on in the house? A. I don't remember.

Q. Did you try the door? A. The storm door.

Q. Then what happened? A. I saw that the police car wasn't going to go on, so I gave up the ghost and told them that I might as well ride down town with them.

Q. Did you tell them that you were one of the men in the holdup? A. No.

306 Q. Do you remember telling the police officers, "Let's go—you got me!" A. No. No, it seems that I said, "I might as well go down town with you."

Q. You didn't say why? A. I don't remember—I was feeling pretty low—high and low, at the same time.

Q. Did the police officers ask you why you should ride down town with them? A. I don't know—they just assumed that I was the one they wanted—I really don't know.

Q. After the police officers brought you down to the station, Ray, what took place? A. I sat in this room for awhile—one hour—and they brought in a lineup and then they took me upstairs in jail.

Q. Did the Lieutenant talk to you last night? A. I think so.

Q. Were you searched at the time? A. Yes.

Q. Who did the searching? A. I don't know—I believe one of the officers who brought me in.

Q. Did he find any money on your person? A. I don't know—all I have is you guys word.

Q. Did you see the police officers count any money? A. I think the Lieutenant counted $57.00.

Q. Did you have that money on your person prior to the service station incident? A. No.

Q. How much money do you think you had on your person when you left the tavern? A. I don't know, I thought about eight bucks, unless they got that mixed up with the loot.

Q. This statement is the truth to the best of your knowledge that you just given us, Ray? A. Yes it is—to the best that I can remember.

307 Q. After it is typed up, will you be willing to sign it as the truth after it has been read by you? A. Yes.

Q. Have we made you any threats or promises? A. No.

Q. Has any police officers made you any promises or threats? A. No—except that the Lieutenant promised me that as soon as I was booked that I could call my wife.

Q. You are being held for investigation—you haven't been booked yet. When you are, you will be able to phone your wife.

RAYMOND L. HAYNES

Subscribed and sworn to before me this 20th day of December 1957

CARROLL D. GRAY
Notary Public in and for the State of Washington, Residing in Spokane

HARRY H. COCKBURN

.....6 am .....pm

RLH
12-20-57
1:47 PM

---

308 IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 34735
EN BANC

THE STATE OF WASHINGTON, *Respondent*,

v.

RAYMOND L. HAYNES, *Appellant*.

Opinion—Filed September 14, 1961

In the trial court Raymond L. Haynes, the appellant herein, and his brother, Keith E. Haynes, were found guilty by a jury on a charge of robbery of a filling station in Spokane, Washington, at approximately 9:00 p.m., on the evening of December 19, 1957.

Shortly after the occurrence of the robbery, the two brothers were apprehended, arrested, and taken to the police station in Spokane. There, they were positively identified by the owner of the filling station and his wife as the men who had committed the robbery. Both men were booked for investigation on an open charge on the so-called "small book" of the Spokane police department. *Around noon on the following day*, both appellant and his brother, in the presence of a deputy prosecuting attorney, signed statements in which they admitted having committed the robbery. They were then formally charged with the

crime, and after an appearance before a police judge they were taken to the county jail.

309 At the trial the state offered in evidence the signed statements of appellant and his brother. Appellant objected on two grounds: (a) That the statements offered were not confessions in that they did not contain a clear and unequivocal expression of guilt; and (b) that admission of the statements would violate the constitutional rights of the appellant with respect to self incrimination by forcing him, against his will, to offer evidence against himself. The trial court overruled the objections and admitted the statements. Appellant's principal assignment of error concerns this ruling of the trial court.

Appellant does not now contend that the statements were not confessions. He urges that, as confessions, the statements were erroneously admitted, because the circumstances surrounding their making rendered them involuntary and thus inadmissible under the due-process provisions of the fourteenth amendment to the United States Constitution and Art. I, § 3, of the Washington state constitution. The record discloses that the trial court instructed the jury not to consider any out-of-court admissions or statements of one defendant as evidence against the other defendant, and appellant has made no assertion that this instruction was violated. Consequently, we shall confine our attention to the contention of appellant with respect to his own confession.

Before discussing this contention, we must dispose of the state's argument that the objections (made to prevent the confession from being considered by the jury) did

310 not specifically raise the question of whether the confession was made voluntarily. It seems to us that appellant's objection—that admission of the confession would force him to offer evidence against himself and *against his will*—was sufficient to place the question before the trial court as to whether the confession was voluntary. The record discloses that, after admitting the confession, the trial judge submitted it to the jury under instructions to disregard it if they found it had been made involuntarily. We think this in itself indicates that the trial court had been properly informed by the objection and was well

aware of the fact that voluntariness of the confession was in issue.

We now turn to appellant's argument that admission of the confession into evidence violated his rights to due process under the Federal and state constitutions.

It is clear that decisions of the Supreme Court construing the fourteenth amendment to the United States Constitution prohibit the use of an involuntary confession against a defendant in a criminal action. See, for example, *Ashcraft* v. *Tennessee* (1944), 322 U.S. 143, 88 L. Ed. 1192, 64 S. Ct. 921, and cases cited therein. However, the above-noted instruction given by the trial judge not only indicates he was aware that voluntariness of appellant's confession was in issue, but it also indicates that the confession was *only conditionally admitted* as evidence against the appellant. The *final determination* as to whether it was a voluntary confession, which might be considered as evidence against the appellant, *was made by the jury* and not
311 by the trial judge. The fourteenth amendment to the United States Constitution *does not forbid jury determination* of the issue of voluntariness of a confession. *Stein* v. *New York* (1953), 346 U.S. 156, 97 L. Ed. 1522, 73 S. Ct. 1077. This, plus the fact that appropriate instructions were given to the jury on the question of voluntariness of the confession, should, we think, end this matter.

We say this despite the fact that recently the procedure in our state for determining the voluntariness of a confession has been altered and, we think, improved in terms of fairness and protection to the criminally accused by the adoption of Rule of Pleading, Practice and Procedure 101.-20W, RCW Vol. 0, as amended, effective January 2, 1961. Thereunder, provision is made for a special hearing *before the trial court* out of the presence of the jury on the question of voluntariness of a confession. However, the procedure which was in effect and actually followed at the time the instant case was tried was not necessarily an unfair one. Essentially, it delegated to the jury rather than to the trial judge the responsibility for determining the credibility and evidentiary significance to be attributed to a confession. In this connection perhaps the parallel should be noted that in our system of law we still entrust to the jury rather than the judge the responsibility for

determining the perhaps even more crucial ultimate question of guilt or innocence. Furthermore, it may be noteworthy
312 that there seems to be no serious movement afoot in the Federal or other appellate courts, among the law reviews or text writers to reverse this latter facet of our criminal procedure. As described in *State* v. *Van Brunt* (1944), 22 Wn. (2d) 103, 154 P. (2d) 606, the procedure extant re confessions and applied in the instant case was as follows:

> "... where an issue of fact arises as to the question of the influence of fear produced by threats and confessions made under inducement, it is not a question of law for the court to decide but is a question of fact for the jury under the proper instructions. Where threats or inducements are conceded by the state or where facts are admitted which as a matter of law constituted threats or inducements, it is a question of law for the court."

The confession in the instant case was admitted into evidence by the trial judge. It was submitted to the jury under instructions, which were appropriate to the factual issue of voluntariness. The question before us on this appeal under the *Van Brunt* decision, as excerpted above, is whether the state had conceded or admitted that the confession was made under the influence of threats or inducements. If the answer is in the affirmative, then the trial judge erred as a matter of law in admitting the confession into evidence and allowing the jury to consider it in determining the question of guilt.

We have noted that the confession in issue was made at the close of an approximately fourteen-hour period, during which the appellant was in the Spokane police station on the so-called "small book," and that he was not formally charged with the robbery until after the confession was made. Appellant makes no charge that he was physically mistreated during this period, or that he was de-
313 prived of sleep or food. Specifically, he claims (a) that he was not allowed to telephone his wife during this period, and (b) that he was told he could call her only after he had made a statement and was formally charged.

This, as a condition relative to the making of a statement, *is not conceded by the state.*

Appellant's theory emphasizes that the confession was involuntary because it was procured in violation of RCW 9.33.020(5), which provides:

> ". . .
>
> "(5) No officer or person having the custody and control of the body or liberty of any person under arrest, shall refuse permission to such arrested person to communicate with his friends or with an attorney, nor subject any person under arrest to any form of personal violence, intimidation, indignity or threats *for the purpose of extorting from such person incriminating statements or a confession.* Any person violating the provisions of this section shall be guilty of a misdemeanor. . . ." (Emphasis supplied.)

In *State* v. *Miller*, (1912), 68 Wash. 239, 122 Pac. 1066, in which the prosecution admitted that the defendant had been kept in a dark cell for eight days and was threatened with additional prosecutions if he did not confess, this court held that a confession induced by a violation of RCW 9.33.020(5) was inadmissible under RCW 10.58.030. As we view it, the standard or rule established by the statute breaks down into three facets: (1) a refusal by the police to allow the arrested person to communicate with his friends (obviously including family) or an attorney, or subjection of the suspect to personal violence or threats, etc.; (2) done for the purpose of inducing the arrested person to make incriminating statements; and (3) actually inducing the particular confession under attack. The record in
314 the instant case discloses that the trial judge was aware of this statutory rule for, in addition to giving the jury a general instruction to disregard any confessions they found to be involuntary, he instructed them that if they found that any officer having custody of the appellant denied him communication with his friends or an attorney they could consider such denial in relation to the question of the voluntariness of any statement made. Therefore, we may assume that, in admitting the confession into evidence, the trial judge decided, under the

test set out in *State* v. *Van Brunt, supra*, that the state had neither *conceded nor admitted, as a matter of law*, that the confession was induced by a denial of communication contrary to RCW 9.33.020(5). The appellant's contention that the trial court erred in admitting the confession has merit only if the decision in *Van Brunt* was erroneous.

Reviewing the record, it appears that at the time the confession was offered in evidence by the state the following testimony was before the court:

(1) An admission on cross-examination by one of the police officers who had been called by the state that the confession had been made while the appellant was on the "small book";

(2) A further admission that persons on the "small book" were generally allowed no phone calls, and that the appellant may have been refused permission to call his wife during the period prior to his making the confession;

315 (3) The following question on cross-examination by the appellant's counsel, and answer by one of the police officers:

"Q. At the time you were interrogating the defendant, Raymond Haynes, did you make a statement to him; in effect, that you can't make a phone call until we get a statement? A. I don't remember making any such statement."

Finally, the confession itself concluded with the following:

"Q. Have we made you any threats or promises? A. No. Q. Has [sic] any police officers made you any promises or threats? A. No—except that the Lieutenant promised me that as soon as I was booked that I could call my wife. Q. You are being held for investigation—you haven't been booked yet. When you are, you will be able to phone your wife."

Although it appears from the foregoing that the state's witnesses may be said to have admitted that appellant was refused permission to call his wife until he was formally booked, and that, as things worked out, he was not booked

until after he signed the written confession, the key assertion of appellant—that he was told that he could not call his wife until he signed the written confession—was not admitted. It is our conclusion that, under the procedure in effect in this state at the time of the trial, the trial judge properly admitted the confession *and left to the jury the question of whether it had been made voluntarily.*

In appellant's testimony at the trial there is some indication that during the period he was on the so-called "small book" he was denied permission not only to call his wife but, also, to call an attorney. Appellant makes no contention that the denial of counsel was significant, except
316 as related to the question of the voluntariness of the confession. The question of voluntariness of the confession was properly submitted and passed upon by the jury under the procedure existing at the time. We, therefore, find it unnecessary to consider the significence of absence of counsel during this period in any other context. In any event, absent a showing that, because of the absence of counsel during this period, appellant was "so prejudiced thereby as to infect his subsequent trial with an absence of 'that fundamental fairness essential to the very concept of justice'" (*Crooker* v. *California* (1958), 357 U.S. 433, 2 L. Ed. (2d) 1448, 78 S. Ct. 1287), it should be clear that the absence of counsel, by itself, does not constitute reversible error. *State* v. *Johnson* (1959), 53 Wn. (2d) 666, 335 P. (2d) 809.

Appellant is about twenty-five to thirty years of age. Although there is no statement in the record of his educational background, it is abundantly clear from his testimony at the trial that he is an articulate person and certainly one of average intelligence, to say the least. Except to those perhaps inclined to be apprehensive or unduly allergic to law enforcement officers and their use of effective law enforcement techniques, his three prior felony convictions should be indicative of one of the hard practical facts of life: namely, that the processes of the law were not new and strange to appellant Haynes. To put it bluntly, and with no intention of humor or whimsy, this is not the case of an innocent or bewildered
317 lamb, unfairly disadvantaged by police state officials. Evaluating realistically the circumstances which we

think are reasonably pertinent, we are convinced that (a) submission of the confession for the jury to determine its voluntariness and evidentiary weight, and (b) the absence or lack of legal counsel when the confession was made did not deprive this particular appellant of his liberty without due process of law.

Unquestionably, the judicial branch of the government has an obligation to protect suspected or alleged criminal offenders against unreasonable denial by law enforcement officials of due process—fundamental principles of fair play. This, of course, is true whether untoward official action is merely over-zealous and perhaps due to inexperience, or is attributable, in common parlance, to "harness bull fever"; *i.e.,* over exposure to occupational hazards and authoritarian human tendencies. On the other hand, the courts have a responsibility to protect and secure the public against the vandalism and violence of the apparently ever present and perhaps increasingly threatening criminally inclined segment of our population.

Without citing cases, it may be noted that in fairly recent years significant due process criminal protection concepts have blossomed and developed in American jurisprudence. The concomitant is a loss of some authority, and perhaps effectiveness, on the part of law enforcement officials. From this, realistically, it follows that, in recognizing and applying criminal due process concepts, the problem as well as a function of the judiciary is to
318 chart a reasonable course for the law between two social objectives. (These in some respects, which we will not attempt to delineate, are somewhat paradoxical.) They are (a) protection of the public against criminal acts and conduct of its members, and (b) protection of the criminally accused against over-zealous and unfair law enforcement activities. Either objective considered and emphasized without relation to the other can easily lead to one or the other of two undesirable extremes. The problem, at times, is quite perplexing, but not to the degree that reasonable, intelligent and workable judicial resolution is impossible.

With the foregoing considerations in mind, it is our best judgment that drawing the line as above indicated

(supporting the validity of the trial court's handling of the confession) affords reasonable protection not only to the criminal defendant herein but also to the members of the public of our state.

It has been urged that the recent case of *Griffith* v. *Rhay* (Sept. 12, 1960, 9th Circuit), 282 F. (2d) 711, militates against our disposition of the confession issue in the instant case. In *Griffith* the police interrogated the defendant shortly after he was given a narcotic drug to relieve him of pain. He had not been told of his right to counsel or of his right to remain silent. The Court of Appeals, considering the defendant's youth (nineteen years), his limited formal education, and a history of emotional instability, along with other circumstances, held that
319 the confession obtained at the interrogation was invalid. The circumstances of the instant case are manifestly different from those in *Griffith* v. *Rhay*, *supra*. See, in addition to *Crooker* v. *California*, *supra*, *Cicenia* v. *LaGay* (1958), 357 U.S. 504, 2 L. Ed. (2d) 1523, 78 S. Ct. 1297, in which the United States Supreme Court upheld the procurement of a confession obtained from a defendant who turned himself over to the police upon the advice of counsel, and whose repeated demands during interrogation to confer with counsel and the contemporaneous demands of the attorney to see his client were denied until after the confession was obtained.

Appellant has also assigned error to the trial court's instructions Nos. 5 and 10. Instruction No. 5 informed the jury that the crime of robbery consists of taking of personal property from the person of, or in the presence of, the owner against the owner's will and by means of force or violence, or fear of immediate injury to his person. Appellant contends that the instruction should have included an additional element; *i.e.*, a specific intent to deprive and defraud the owner of his property. The record discloses that the trial court declined to include this element in the instructions because it is an element of the crime of larceny, and where the charge is robbery an instruction on larceny is not required unless requested as an instruction on a lesser included offense. *State* v. *Parsons* (1906), 44 Wash. 299,

87 Pac. 349. As no request was made for such instruction on larceny—the appellant in fact insisting that he did not want such an instruction—we conclude that instruc-
320 tion No. 5, as given, was sufficient. *State* v. *Druxman* (1915), 88 Wash. 424, 153 Pac. 381.

Instruction No. 10 informed the jury that, where the actual existence of a particular intent is a necessary element to constitute a particular crime, the fact of the appellant's intoxication may be considered in determining his capability to form the intent to commit the crime. Appellant objected to the following language contained in the instruction:

"If you find either accused was so drunk at the time he is alleged to have committed the crime charged as to render him unconscious of his act, incapable of controlling his will, and forming and entertaining a *felonious* intent, his intoxication is a defense." (Emphasis supplied.)

Specifically, appellant urges that the instruction is inadequate for failing to define the "felonious intent" required in robbery as an intent to steal. This question was raised in *State* v. *Byers* (1925), 136 Wash. 620, 241 Pac. 9, and was disposed of adversely to appellant's contention. We adhere to that decision.

For the reasons indicated hereinbefore, the judgment of the trial court should be affirmed. It is so ordered.

FINLEY, *C. J.*

We Concur:

MALLERY, *J.*

OTT, *J.*

HILL, *J.*

HUNTER, *J.*

FOSTER, *J.* (dissenting)—I dissent.

The facts surrounding appellant's arrest and detention, and concerning which there is no material dispute,[1] are as follows:

Appellant was arrested at approximately nine p.m., Thursday, December 19, 1957. The police officers testified that there was little doubt appellant had committed the crime in question. He was taken to the police station, questioned by two police officers, and pressed for a statement of guilt. He then asked permission to call an attorney, but he was told that he could do so only if he "co-operated" and made the statement. The complaining witnesses positively identified him as one of the two men who had robbed them. Nevertheless, when he was taken to the city jail, he was booked on an "open charge," or, in plain language, held for investigation without charge, characterized by police officials as the "small book" which prohibited telephone calls or visitors.

Appellant was interrogated from about 10:30 p.m. to midnight by a police lieutenant who, observing the
322 rules of the small book, denied appellant's request to call his wife. The next morning, appellant was again interrogated for approximately one and one-half hours. His request to call his wife was reiterated and again refused. The police said that when appellant made a statement he would be booked on a specific charge, and only then would he be allowed to call his wife. The police answer was repeated over and over again.

Subsequently that morning, appellant dictated, but refused to sign, a statement. It was offered in evidence by the state and admitted. The quoted portion reveals the unfairness which attended the entire police proceeding:

---

[1] The testimony of one member of the police department that he did not remember telling the appellant that he could not telephone until he made the requested statment does not amount to a denial of appellant's positive testimony that the police did so, especially when appellant testified that other members of the police department made similar statements.

"Q. Have we made you any threats or promises? A. No. Q. Has any police officers [sic] made you any promises or threats? A. No—*except that the Lieutenant promised me that as soon as I was booked that I could call my wife.* Q. You are being held for investigation—you haven't been booked yet. When you are, you will be able to phone your wife." (Italics mine.)

When asked to sign the statement, appellant refused to do so and again requested permission to call his wife, which was again refused. Instead, he was conducted to a deputy prosecutor's office where he was asked to make another statement. He did so, but again he refused to sign because he had not been allowed to call his wife. He was again promised that he would subsequently be allowed to call. He finally did sign a stenographic transcription of the statement previously made at the city jail, but refused to sign the new one. It was only then that he was charged with robbery, and was taken for a preliminary hearing
323 before a magistrate about four p.m. the day after arrest.

At the preliminary hearing, appellant signed another copy of the statement he had made at the city jail. He was then bound over and transferred to the county jail where he was confined until the following Tuesday or Thursday, December 24th or 26th, when he was returned to the deputy prosecutor's office and again asked to sign the statement previously made there. He again refused. It was in that office, on December 24th or 26th, either five or seven days after his arrest, that appellant was allowed to make his first contact with the outside world, a telephone call to his wife.

At no time from his arrest on December 19th to the time of the telephone call on December 24th or 26th, was appellant allowed to communicate with anyone outside despite his repeated requests to do so. Appellant's wife had telephoned the city jail where he was incarcerated on Friday, December 20th. She was refused any information at that time except the fact that he was being held. The following day, Saturday, December 21st, she called at the jail in a futile attempt to see him but was not successful until Thursday, December 26th, one full week after the arrest.

It cannot be overemphasized that the police themselves admitted that appellant was confined under the small book, which prohibited all visitors and utterly precluded any communication with the outside world.

324 At no time during the first twenty-four hours, at the end of which appellant signed a confession, or during the ensuing proceedings covering a full week, was he represented by counsel, despite repeated requests. Such, then, are the facts revealed by the record brought here.

In criminal prosecutions, both in England and in the United States, the accusatorial system prevails in contrast with the inquisitorial method of continental Europe. Of this, Mr. Justice Frankfurter for the court in *Watts* v. *Indiana*, 338 U.S. 49, 93 L. Ed. 1801, 69 S. Ct. 1347, said:

> "Ours is the accusatorial as opposed to the inquisitorial system. Such has been the characteristic of Anglo-American criminal justice since it freed itself from practices borrowed by the Star Chamber from the Continent whereby an accused was interrogated in secret for hours on end. See Ploscowe, *The Development of Present-Day Criminal Procedures in Europe and America*, 48 Harv. L. Rev. 433, 457-58, 467-473 (1935). Under our system society carries the burden of proving its charge against the accused not out of his own mouth. It must establish its case, not by interrogation of the accused even under judicial safeguards, but by evidence independently secured through skillful investigation. 'The law will not suffer a prisoner to be made the deluded instrument of his own conviction.' 2 Hawkins, Pleas of the Crown, c. 46, § 34 (8th ed., 1824). The requirement of specific charges, their proof beyond a reasonable doubt, the protection of the accused from confessions extorted through whatever form of police pressures, the right to a prompt hearing before a magistrate, the right to assistance of counsel, to be supplied by government when circumstances make it necessary, the duty to advise an accused of his constitutional rights—these are all characteristics of the accusatorial system and manifestations of its demands. . . ."

Even in *Haley* v. *Ohio*, 332 U.S. 596, 92 L. Ed. 224, 68 S. Ct. 302, the confession typed by the police contains a prologue that the accused was advised of his con-
325 stitutional right not to speak and that anything he said might be used against him. Modern English law requires the identical safeguards. Mr. Justice Devlin of the High Court of Justice, in his recent work respecting police interrogation, entitled "the Criminal Prosecution in England" (Yale U. Press, 1958), said:

> "The form of caution expresses two things. First, there is the remainder that the accused is not obliged to talk; secondly, there is the warning that, if he does talk, what he says will be taken down in writing and may be given in evidence. . . ." Devlin, The Criminal Prosecution in England, chapter 2, p. 31, 36.

During the police examination of the accused, the signed question and answer confession discloses that appellant begged to talk even to the prosecutor. This, too, was denied him. The overpowering circumstance of this record is that the accused was never advised of his constitutional right to refuse to speak or that, if he did so, his statement might be used against him; nor was he accorded his constitutional right to counsel.

In light of the long struggle for human rights culminating in our constitutional prohibition against self incrimination and the constitutional guaranty of the right to counsel, I am not persuaded that the admission in evidence of a confession under the circumstances disclosed by this record comports with the due process requirement of the fourteenth amendment to the Federal constitution.

The state contends, and the court holds, that the sole issue to be determined in deciding whether appellant
326 was accorded due process of law as required by the fourteenth amendment to the United States constitution and Art. I, § 3, of the Washington state constitution, is whether the confession was voluntary or not. It is held that the jury properly made such determination. However, voluntariness is not to be considered in isolation, but the question on the due process issue is whether the totality of the circumtances show that the appellant's "will was overborne at the time he confessed."

The methods employed in criminal prosecutions are limited by the fundamental rights guaranteed by the constitution, and evidence thus produced may not be used if such use results in a violation of those rights. *Lisenba* v. *California*, 314 U.S. 219, 86 L. Ed. 166, 62 S. Ct. 280; *Chambers* v. *Florida*, 309 U.S. 227, 84 L. Ed. 716, 60 S. Ct. 472.

Here we are confronted with a violation of the right to counsel prior to trial. Such constitutional right is explicitly guaranteed by the state and Federal constitutions. Without the effective assistance of counsel, the fairness required by due process is impossible.

From the undeniable facts with which this record fairly bristles, it is certain that for a whole week following his arrest, in spite of repeated requests, appellant was denied the right to see or communicate with anyone not positively identified with his prosecution.

The New York court of appeals decided in *People*
327 v. *Di Biasi*, 7 N.Y. (2d) 544, 166 N.E. (2d) 825, that constitutional rights were violated when police continued to interrogate one charged with murder in the absence of his attorney. The appellate division of the supreme court of New York in *People* v. *Stevenson*, 213 N.Y.S. (2d) 930, subsequently reversed the dismissal of a petition for a writ of error *coram nobis* because the accused should have been permitted to prove that he was interrogated by the police in the absence of counsel, which violated his constitutional rights.

The court's decision affirming Haynes' conviction cannot stand in the face of *Reck* v. *Pate*, 367 U.S. 433, 6 L. Ed. (2d) 948, 81 S. Ct. 1541 (June 12, 1961). The circumstances of that case are strikingly similar to those presented here and are briefly summarized by Mr. Justice Douglas in his concurring opinion:

> "He was arrested Wednesday morning, March 25, 1936. The next day, March 26, his father went to the police asking where his son was and asking to see him. The police would give him no information. On March 27 his father came to the police station again but was not allowed to see his son. Later the father tried to see his son at the hospital but was denied admission.

"The father was denied the right to see his son over and again. The son was held for at least eight full days *incommunicado*. He was arraigned before a magistrate on April 2, 1956 [*sic*, 1936], only after he had confessed."

The court's opinion stated the test was:

". . . The question in each case is whether a defendant's will was overborne at the time he confessed. . . ."

Mr. Justice Douglas, in his concurrence, made a statement that precisely fits the circumstance which the court here sanctions:

"We do know that long detention, while the prisoner is shut off from the outside world, is a recurring practice in this country—for those of lowly birth, for those without friends or status. . . ."

328 I cannot agree that the defendant's right to a fair trial was not denied by the admission in evidence of this confession.

In *Crooker* v. *California*, 357 U.S. 433, 2 L. Ed. (2d) 1448, 78 S. Ct. 1287, quoted and approved in *State* v. *Johnson*, 53 Wn. (2d) 666, 335 P. (2d) 809, the supreme court of the United States said:

". . . state refusal of a request to engage counsel violates due process not only if the accused is deprived of counsel at trial on the merits, *Chandler* v. *Fretag*, *supra* [348 U.S. 3, 99 L. Ed. 4, 75 S. Ct. 1], but also if he is deprived of counsel for any part of the pretrial proceedings, provided that he is so prejudiced thereby as to infect his subsequent trial was an absence of 'that fundamental fairness essential to the very concept of justice.' . . ."[2]

The first issue for determination is whether the denial of appellant's constitutional right to counsel resulted in an absence of fairness in his prosecution.

---

[2] In *Thorne* v. *Callahan*, 39 Wn. (2d) 43, 234 P. (2d) 517, this court held that a denial of counsel, which resulted in unfairness to the accused, was a denial of due process.

The right to have counsel at the pretrial stage is almost invariably necessary to give meaning and protection to the right to be heard at trial itself. See *Chandler* v. *Fretag*, 348 U.S. 3, 99 L. Ed. 4, 75 S. Ct. 1; *House* v. *Mayo*, 324 U.S. 42, 89 L. Ed. 739, 65 S. Ct. 517; *Avery* v. *Alabama*, 308 U.S. 444, 84 L. Ed. 377, 60 S. Ct. 321; *Powell* v. *Alabama*, 287 U.S. 45, 77 L. Ed. 158, 53 S. Ct. 55. Mr. Justice Jackson stated in a separate opinion in *Watts* v. *Indiana*, 338 U.S. 49, 93 L. Ed. 1801, 69 S. Ct. 1347, 69 S. Ct. 1357, as follows:

329 "If the State may arrest on suspicion and interrogate without counsel, there is no denying the fact that it largely negates the benefits of the constitutional guaranty of the right to assistance of counsel. Any lawyer who has ever been called into a case after his client has 'told all' and turned any evidence he has over to the Government, knows how helpless he is to protect his client against the facts thus disclosed."

Thus, as a consequence of police interrogations and procedures which result in the accused making an incriminating statement before he is allowed to consult with counsel, a lawyer's subsequent efforts, despite eminent ability and diligent application, inevitably lack effectiveness.[3]

In *Ex parte Sullivan*, 107 F. Supp. 514, two accused persons requested counsel upon arrest and ensuing interrogation. Counsel was denied them. Incriminating statements made during the interrogation period were admitted in evidence in a state court. The conviction was a denial of due process. The court held:

---

[3] In *State* v. *Phillips*, 59 Wash. 252, 109 Pac. 1047, this court held:

"... The aid of counsel is guaranteed by the constitution to every person accused of crime, and this is universally recognized as one of the surest safeguards against injustice and oppression. Any conduct or statement on the part of the court that tends to impair the influence or destroy the usefulness of counsel is palpable and manifest error. ..."

Certainly, such holding is applicable to any official acts, whether during or before trial, which impair the usefulness of counsel.

> "... unquestionably Petitioners were entitled to have effective counsel *at the trial*. The question here is how they ever could have had effective counsel at the trial, no matter how skilled, in view of what went on before trial. They were denied effective counsel at the trial itself because of what went on before trial while the defendants were without counsel, and absolutely under the control of the prosecution."

330 Former United States Circuit Judge Justin Miller, when Dean of the Duke University Law School, in his discussion entitled "Lawyers and the Administration of Criminal Justice," 20 American Bar Jour. 77 (1934), declared:

> "... Although competent counsel is of great value at that time, the time when an accused person really needs the help of a lawyer is when he is first arrested and from then on until trial. The intervening period is so full of hazards for the accused person that he may have lost any legitimate defense, long before he is arraigned and put on trial. ..."[4]

Von Moltke v. *Gillies*, 332 U.S. 708, 92 L. Ed. 309, 68 S. Ct. 316, teaches that prior to trial an accused is entitled to

---

[4] See 44 Ky. L. Jour. 103, Criminal Procedure—Right to Counsel Prior to Trial, wherein it is said:

> "If at any time, from the time of his arrest to final determination of his guilt or innocence, an accused really needs the help of an attorney, it is in the pre-trial period. . . . Indeed, the pre-trial period is so full of hazards for the accused that, if unaided by competent legal advice, he may lose any legitimate defense he may have long before he is arraigned and put on trial. . . ."

In a concurring opinion in *Spano* v. *New York*, 360 U.S. 315, 3 L. Ed. (2d) 1265, 79 S. Ct. 1202, Chafee, Documents on Fundamental Human Rights, pamphlet 2 (1951-1952), p. 541, is quoted as follows:

> "'A person accused of crime needs a lawyer right after his arrest probably more than at any other time.'"

See, also, Orfield, Criminal Procedure From Arrest to Appeal, chapter 1, § 23, p. 43 (1947).

rely upon counsel to make an independent examination of the facts and the applicable law without which an informed judgment is impossible.[5] This appellant groped in the dark, misled by his prosecutors. While perhaps this is not coercion, resort to speculation is unnecessary to know that one learned in the law would have advised that "silence is golden" and that he had a constitutional right not to speak.

331

State v. *Levy*, 8 Wn. (2d) 630, 113 P. (2d) 306, approved the statement made in *State* v. *Manderville*, 37 Wash. 365, 79 Pac. 977, and *State* v. *Dale*, 115 Wash. 466, 197 Pac. 645:

> "'Where an error is made which violates a constitutional provision, the judgment in a criminal case will ordinarily be reversed without a showing that said error did prejudice the rights of the defendant, unless the facts and circumstances be such that it affirmatively appears that such defendant was not, and could not have been, injured thereby.' . . ."

Glasser v. *United States*, 315 U.S. 60, 86 L. Ed. 680, 62 S. Ct. 457, held:

> ". . . The right to have the assistance of counsel is too fundamental and absolute to allow courts to indulge in nice calculations as to the amount of prejudice arising from its denial. . . ."

In *Powell* v. *Alabama*, *supra*, the supreme court of the United States said:

> ". . . Even the intelligent and educated layman has small and sometimes no skill in the science of law. If

---

[5] This court has held that even where it appeared to the court that "the issues of fact and law were comparatively simple," counsel, nevertheless, had the duty "to make a full and complete investigation of both the facts and the law in order to advise his client and prepare adequately and efficiently to present any defenses he might have to the charges against him." *State* v. *Hartwig*, 36 Wn. (2d) 598, 219 P. (2d) 564.

The services of a lawyer even in such a situation are deemed indispensable and the time needed for adequate and effective preparation must be granted.

charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. *He requires the guiding hand of counsel at every step in the proceedings against him.* . . . If that be true of men of intelligence, how much more true is it of the ignorant and illiterate, or those of a feeble intellect. . . ." (Italics mine.)[6]

332 In *Crooker* v. *California, supra*, the conviction was affirmed because the accused was an intelligent college graduate with a law school training, which included criminal law and evidence, who knew that he could rightfully refuse to speak. The present circumstances are the reverse. The appellant's education was not only limited, but his intelligence fails to rise above mediocrity and his knowledge of the law is a minus factor. His timely request for counsel was denied until such assistance was pointless. Such was denial of a constitutional right, and prejudice is presumed. *Butzman* v. *United States*, 205 F. (2d) 343; *Williams* v. *Kaiser*, 323 U.S. 471, 89 L. Ed. 398, 65 S. Ct. 363; *Glasser* v. *United States, supra; Jablonowski* v. *New Jersey*, 29 N.J. Super. 109, 102 A. (2d) 56.

In *Watts* v. *Indiana, supra*, the supreme court of the United States held:

---

[6] As was stated by Mr. Justice Douglas, dissenting, in *Bute* v. *Illinois*, 333 U.S. 640, 92 L. Ed. 986, 68 S. Ct. 763:

". . . The reason is that the guilty as well as the innocent are entitled to a fair trial, that a layman without the experience and skill of counsel to guide him may get lost in the intricacies of the law and lose advantages which it extends to every accused, that without expert appraisal of the circumstances surrounding his arrest, detention, arraignment, and conviction the penalties he suffers may be aggravated by his own ignorance or by overreaching of the prosecution or police. . . ."

". . . To turn the detention of an accused into a process of wrenching from him evidence which could not be extorted in open court with all its safeguards, is so grave an abuse of the power of arrest as to offend the procedural standards of due process."[7]

333 A fundamental lack of fairness fatal to due process results.

But there is another and more compelling reason for excluding the confession. RCW 9.33.020(5) is as follows:

"No officer or person having the custody and control of the body or liberty of any person under arrest, *shall refuse permission to such arrested person to communicate with his friends or with an attorney*, nor subject any person under arrest to any form of personal violence, intimidation, indignity or threats for the purpose of extorting from such person incriminating statments or a confession. Any person violating the provisions of this section shall be guilty of a misdemeanor." (Italics mine.)

---

[7] In *Spano* v. *New York*, *supra*, the United States supreme court reversed a state court conviction where "The police were not . . . merely trying to solve a crime, or even to absolve a suspect . . . . They were rather concerned primarily with securing a statement from defendant on which they could convict him. The undeviating intent of the officers to extract a confession from petitioner is therefore patent. . . ." Such was held to be a major consideration in the court's reasons for reversal.

In *Chalmers* v. *H. M. Advocate*, 1954 Ses. Cas. (Ct. of Justiciary) 66, 78, the Court held:

". . . The theory of our law is that at the stage of initial investigation the police may question anyone with a view to acquiring information which may lead to the detection of the criminal; but that, when the stage has been reached at which suspicion, or more than suspicion, has in their view centered upon some person as the likely perpetrator of the crime, further interrogation of that person becomes very dangerous, and, if carried too far, *e.g.*, to the point of extracting a confession by what amounts to cross-examination, the evidence of that confession will almost certainly be excluded. . . ."

The undeniable facts disclosed by this record show a violation of the statute. Appellant was not charged until after the confession was signed, the day following his arrest, during which time his every request to communicate with the outside world was denied. In that interval, he was not advised of his right to refuse to talk to the police.

The statute is violated if, for the purpose of extorting a confession, the person under arrest is denied permission to communicate with friends or an attorney. The in-
334 struction is set out in the margin.[8] The statute does not require that the purpose must have been successful, that is, that the confession be actually extorted through the denial of counsel. Denial of the right to communicate for that purpose is sufficient and an added element that the confession must, in fact, have been induced by such action denudes the statute.

Therefore, "voluntariness" is not material, for by the plain terms of the statute the question is whether the accused was denied permission to communicate with friends or counsel and whether the purpose of such refusal was to obtain an incriminating statement or confession.

It is not difficult to determine why his repeated requests for outside communication were denied, nor why his wife was refused permission to see him on her visit to the jail for that purpose prior to the confession. Detention without charge is a time-honored method for keeping an accused under the exclusive control of the police who are thereby

---

[8] "You are instructed that Subdivision 5 of Section R.C.W. 9.33.020 reads as follows:

"'No officer or person having the custody and control of the body or liberty of any person under arrest, shall refuse permission to such arrested person to communicate with his friends or with an attorney, nor subject any person under arrest to any form of personal violence, intimidation, indignity or threats for the purpose of extorting from such person incriminating statements or a confession.'

"If you find from the evidence in this case that any officer having custody of either defendant in this case denied him communication with his friends or an attorney in violation of the above statute, than I instruct you that you may consider such denial in connection with the voluntariness of any statement made." Instruction No. 12.

able to operate at their leisure while the accused is at their mercy. *Reck* v. *Pate, supra.*

The postconfession events are equally germane to the preconfession exploits in consideration of the ques-
335 tion of whether the police conduct and purpose was in violation of the statute, because a callous disregard by police of appellant's constitutional and statutory rights is manifested.

Haley v. *Ohio, supra,* held:

> ". . . It is said that these events are not germane to the present problem because they happened after the confession was made. But they show such a callous attitude of the police towards the safeguards which respect for ordinary standards of human relationships compels that we take with a grain of salt their present apologia that the five-hour grilling of this boy was conducted in a fair and dispassionate manner. When the police are so unmindful of these basic standards of conduct in their public dealings, their secret treatment of a 15-year-old boy behind closed doors in the dead of night becomes darkly suspicious.
>
> ". . . Formulas of respect for constitutional safeguards cannot prevail over the facts of life which contradict them. . . ."

The state's answer is that, if the police violated the statute, the guilty should be punished; but that overlooks the fundamental purpose of the statute itself which is to prohibit a denial of communication with friends or counsel. The state should not be permitted to offer in evidence a confession obtained by the unlawful conduct of the police. Public policy forbids.[9]

---

[9] In *Spano* v. *New York, supra,* the supreme court of the United States expressed ". . . the deep-rooted feeling that the police must obey the law while enforcing the law; that in the end life and liberty can be as much endangered from illegal methods used to convict those thought to be criminals as from the actual criminals themselves. . . ." This view was reiterated most recently in *Blackburn* v. *Alabama,* 361 U.S. 199, 4 L. Ed. (2d) 242, 80 S. Ct. 274.

Denning, Freedom Under the Law (1949), chapter 1, pp. 3, 26, observed: "It is just as important that the police should be honest and fair in all their dealings as that judges should be."

The proper rule of law to be applied under the circumstances of this record is the one applied in the unlaw-
336 ful search and seizure cases.[10] *State* v. *Buckley*, 145 Wash. 87, 89, 258 Pac. 1030, said:

> "It is the rule of the English courts, and is the rule of the courts in a majority of the American states, that the admissibility of evidence is not affected by the manner in which, the means by which, or the source from which, it is obtained. It is held that, if the evidence is otherwise pertinent to the issue, it is no valid objection to its admissibility to show that it was unlawfully or illegally obtained. See the note of Mr. Freeman to *State* v. *Turner*, 82 Kan. 787, 109 Pac. 654, 136 Am. St. 129, 135. The highest court of the land, however, has uniformly followed a contrary rule. It has said, in no uncertain language, that it is beneath the dignity of the state, and contrary to public policy, for the state to use for its own profit evidence that has been obtained in violation of law. *Boyd* v. *United States*, 116 U.S. 616; *Weeks* v. *United States*, 232 U.S. 383; *Silverthorne Lumber Co.* v. *United States*, 251 U.S. 385; *Gouled* v. *United States*, 255 U.S. 298; *Amos* v. *United States*, 255 U.S. 313; *Agnello* v. *United States*, 269 U.S. 20. We have ourselves followed the Federal rule. *State* v. *Gibbons*, 118 Wash. 171, 203 Pac. 390; *State* v. *Dersiy*, 121 Wash. 455, 209 Pac. 837; *State* v. *Smathers*, 121 Wash. 472, 209 Pac. 839."

Other cases are collected in the margin.[11]

---

[10] *Mapp* v. *Ohio*, 367 U.S. ——, —— L. Ed. (2d) ——, —— S. Ct. ——, (June 19, 1961), decided that the exclusionary rule of *Weeks* v. *United States*, 232 U.S. 383, 58 L. Ed. 652, 34 S. Ct. 341, was applicable to criminal prosecutions in state courts.

[11] *State* v. *Miles*, 29 Wn. (2d) 921, 190 P. (2d) 740; *Tacoma* v. *Houston*, 27 Wn. (2d) 215, 177 P. (2d) 886; *State* v. *Gunkel*, 188 Wash. 528, 63 P. (2d) 376; *State* v. *Knudsen*, 154 Wash. 87, 280 Pac. 922.

337 Instruction No. 11[12] was clearly erroneous because it told the jury without reservation that a confession was not rendered involuntary because the accused was not reminded that he was under arrest, that he was not obliged to reply, that his answer would be used against him, nor that he was entitled to be represented by counsel; while the law is that such circumstances are to be considered

[12] "By statute of the State of Washington, it is provided:

"'The confession of a defendant made under inducement, with all the circumstances, may be given as evidence against him, except when made under the influence of fear produced by threats; but a confession made under inducement is not sufficient to warrant a conviction without corroborating testimony.'

"You are further instructed that a 'voluntary confession' is taken to mean a confession made of the free will and accord of the defendant without over-persuasion, and without coercion induced by fear or threat of harm and without inducement by promising or holding out hope of reward or immunity; or, stated in another way, a confession which is forced or extorted in any manner by over-persuasion, promise or threats is an involuntary confession.

"The same rule applies to oral admissions made by one accused of crime.

"If you believe from the evidence in this case beyond a reasonable doubt that either defendant may any confession or oral admission, then you are instructed to disregard any such confession or admission unless you further find from the evidence beyond a reasonable doubt that such confession or admission, if any, was voluntarily made.

"And in this connection, I further instruct you that a confession or admission of a defendant is not rendered involuntary because he is not at the time of making the same reminded that he was under arrest, or that he was not obliged to reply, or that his answers would be used against him, or that he was entitled to be represented by counsel.

"If you find that confessions or oral admissions were made, and were voluntarily made by the defendants, then it is your province to determine the weight and credit to be given them." Instruction No. 11.

in determining whether the confession is voluntary or involuntary.[13]

The approved instruction was summarized in *Stroble* v. *California*, 343 U.S. 181, 189, 96 L. Ed. 872, 72 S. Ct. 599, as follows:

338 "The trial court charged the jury that it could not consider a confession unless it was voluntary; that the jury was the sole judge of voluntariness; and that a confession was not voluntary when obtained by any kind of violence, abuse, or threat, or by 'any coaxing, cajoling, or menacing influence which induces in the mind of the defendant the belief or hope that he will gain some advantage by making a confession.' The court further charged that the fact that a confession is made while an accused is under arrest and being detained, or when he is not represented by counsel, or without his having been told that any statement he makes may be used against him, does not in itself make the confession involuntary, *but is one circumstance to be considered in determining the voluntariness of the confession.* . . ." (Italics mine.)

Again we are admonished by *Rogers* v. *Richmond*, 365 U.S. 534, 5 L. Ed. (2d) 760, 81 S. Ct. 735, that ours is an accusatorial and not an inquisitorial system. The court there said:

"Our decisions under that Amendment have made clear that convictions following the admission into

---

[13] "While in custody and before he was taken before a magistrate, Strain asked the officers for permission to see a lawyer. He was told he would have plenty of time to see one. He was not permitted to see one. The refusal of a request to see a lawyer by a person under arrest and before he is taken before a magistrate is not, in itself, ground for denying admission of such person's confession in evidence. Nor does it result in a denial of his fundamental rights. It is a factor to be considered by the jury in determining whether the confession was voluntary. (*People* v. *Crooker, supra*, 47 Cal. 2d 348, 352-353; *Crooker* v. *State of California, supra*, 357 U.S. 433 [78 S. Ct. 1287, 2 L. Ed. 2d 1448 1453].)" *People* v. *Grace*, 166 Cal. App. (2d) 68, 332 P. (2d) 811.

evidence of confessions which are involuntary, *i.e.*, the product of coercion, either physical or psychological, cannot stand. This is so not because such confessions are unlikely to be true but because the methods used to extract them offend an underlying principle in the enforcement of our criminal law: that ours is an accusatorial and not an inquisitorial system—a system in which the State must establish guilt by evidence independently and freely secured and may not by coercion prove its charge against an accused out of his own mouth. See *Chambers* v. *Florida*, 309 U.S. 227; *Lisenba* v. *California*, 314 U.S. 219, 236; *Rochin* v. *California*, 342 U.S. 165, 172-174; *Spano* v. *New York*, 360 U.S. 315, 320-321; *Blackburn* v. *Alabama*, 361 U.S. 199, 206-207. And see *Watts* v. *Indiana*, 338 U.S. 49, 54-55. . . .'

Rogers' lawyer was not allowed to confer with him because the coroner had prohibited all communication with the prisoner. Rogers himself was likewise denied the right to see counsel.

The conviction was affirmed by the Connecticut supreme court—not because the confession was voluntary, but because it was true.

The United States supreme court reversed because the Connecticut courts applied the wrong test.

339 ". . . The employment instead, by the trial judge and the Supreme Court of Errors, of a standard infected by the inclusion of references to probable reliability resulted in a constitutionally invalid conviction, pursuant to which Rogers is now detained 'in violation of the Constitution.' A defendant has the right to be tried according to the substantive and procedural due process requirements of the Fourteenth Amendment. This means that a vital confession, such as is involved in this case, may go to the jury only if it is subjected to screening in accordance with correct constitutional standards. To the extent that in the trial of Rogers evidence was allowed to go to the jury on the basis of standards that departed from constitutional requirements, to that extent he was unconstitu-

tionally tried and the conviction was vitiated by error of constitutional dimension."

Here the jury was given a wrong test for determining the admissibility of a confession. The law is that, in determining whether the confession was involuntary or voluntary, the jury is entitled to consider whether the appellant was advised that he need not answer, or that, if he did, his admissions would be used against him, or that he was entitled to consult counsel before answering; whereas, the court instructed that such circumstances did not render the confession involuntary.

The state's argument that the conviction should be sustained, because, independent of the confession, there was ample proof of guilt, is untenable. Upon appeal, the issue is whether the appellant's constitutional rights have been infringed. His guilt or innocence is for the jury's determination exclusively.

The proofs of guilt, which are said to be sufficient to sustain a conviction, were all known to the police prior to the confession, which furnishes all the more reason appellant should have been promptly charged with the crime and a preliminary hearing before a magistrate held. But the desire to wrap up the case with a confession was
340 irresistible, and the unconstitutional course of conduct was pursued.

If an incompetent confession has been admitted, the conviction will be set aside by the nation's supreme court even though the evidence, apart from the confession, was sufficient. *Payne* v. *Arkansas*, 356 U.S. 560, 2 L. Ed. (2d) 975, 78 S. Ct. 844; *Brown* v. *Allen*, 344 U.S. 443, 97 L. Ed. 469, 73 S. Ct. 397, 73 S. Ct. 437; *Malinski* v. *New York*, 324 U.S. 401, 89 L. Ed. 1029, 65 S. Ct. 781; *Lyons* v. *Oklahoma*, 322 U.S. 596, 88 L. Ed. 1481, 64 S. Ct. 1208.

I would reverse the judgment and order a new trial with directions to exclude the confession if offered.

FOSTER, J.

I concur.
ROSELLINI, J.

WEAVER, J. (dissenting)—I concur in the result of Judge Foster's dissent granting a new trial, with directions to exclude the confession if offered.

My reasons are expressed in that portion of the dissenting opinion discussing the violation by the police of RCW 9.35.020(5).

WEAVER, J.

341 DONWORTH, J. (dissenting) The test laid down by the United States Supreme Court in its most recent decision on the subject of the admissibility of confessions (*Culombe* v. *Connecticut*, 367 U.S. 568, 6 L. Ed. (2d) 1037, 81 S. Ct. 1860) is as follows:

> "... The ultimate test remains that which has been the only clearly established test in Anglo-American courts for two hundred years: the test of voluntariness. Is the confession the product of an essentially free and unconstrained choice by its maker? If it is, if he has willed to confess, it may be used against him. If it is not, if his will has been overborne and his capacity for self-determination critically impaired, the use of his confession offends due process. *Rogers* v. *Richmond*, 365 U.S. 534. The line of distinction is that at which governing self-direction is lost and compulsion, of whatever nature or however infused, propels or helps to propel the confession."

The record in this case, viewed as a whole, convinces me that the confession of appellant was involuntary and should not have been admitted into evidence because not only was an arrested man denied the right to call an attorney or his wife (in clear violation of RCW 9.33.020(5), set out in the majority opinion), but the officers having his custody made it clear to him that they would continue to hold him incommunicado until he "co-operated" by signing a statement admitting his guilt. His requests for permission to contact his wife were repeatedly denied. His wife was also prohibited from seeing him or talking with him on the telephone during a period of about a week after his arrest. All of the above facts were undisputed at the trial.

In this case the state has admitted facts which, as a matter of law, make the confession involuntary and inad-

missible if that confession is a result of those facts. Unless there is evidence to the contrary, a confession arising out of such coercive circumstances must be held to be a result of those circumstances, and, hence, involuntary.

342 On a new trial the state, of course, is not precluded from attempting to show that the confession was, in fact, voluntary. See *Turner* v. *Pennsylvania*, 338 U.S. 62, 93 L. Ed. 1810, 69 S. Ct. 1352. However, as the record now stands, the burden of proof is upon the state, and that burden is a heavy one, for the state has to show that the confession would have been made even if appellant had not been prevented from contacting "friends or an attorney" (*i.e.*, even if the officers had not violated the statute). No evidence was offered at the first trial which would tend to prove that the confession was not a result of the circumstances described above. Therefore, there was no issue of fact for the jury to determine, and the trial judge erred as a matter of law in admitting the confession into evidence and submitting the issue of voluntariness to the jury.

I would reverse the judgment and sentence and remand the case for a new trial, wherein, if the confession were again offered, in my opinion, it should be dealt with in accordance with Rule of Pleading, Practice and Procedure 101.20W, RCW Vol. 0, as last amended, effective January 2, 1961.

DONWORTH, J.

• • • • • • • • • • •

343 PETITION FOR REHEARING

Covering 7 Pages Filed—October 13, 1961

(Omitted from this print)

It was denied and nothing more by order November 8, 1961

• • • • • • • • • • •

(File endorsement omitted)

350 IN THE SUPREME COURT OF THE STATE OF WASHINGTON

Order Denying Petition for Rehearing—November 8, 1961

The court having considered the appellant's petition for a rehearing herein and a majority of the Judges being of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing be and it is hereby denied.

Dated this 8 day of November, 1961.

By the Court:

R. C. FINLEY
Chief Justice

(File endorsement omitted)

351 IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 34735

THE STATE OF WASHINGTON, *Respondent*,
v.
RAYMOND L. HAYNES, *Appellant*.

Order Granting Stay of Execution and Enforcement of Judgment—November 9, 1961

Upon application and motion of Raymond L. Haynes, appellant in the above-entitled cause, by LeRoy C. Kinnie, his counsel, for a stay of execution and enforcement of the judgment of the Supreme Court of the State of Washington, to enable said appellant to apply for and obtain a writ of certiorari from the Supreme Court of the United States, and good cause therefore being shown, it is

ORDERED that the execution and enforcement of said judgment be and it hereby is stayed for a period of ninety days from the date hereof, or until a writ of certiorari and further stay is granted or denied by the Supreme Court of the United States, whichever occurs first.

IT IS FURTHER ORDERED that said appellant shall remain at liberty during this period under the appeal bond now posted in this cause in the sum of $3,000.00, and no further bond shall be required from said appellant.

DONE IN OPEN COURT this 9 day of November, 1961.

R. C. FINLEY
Chief Justice

Presented by:
/s/ LEROY C. KINNIE
LeRoy C. Kinnie

---

352 IN THE SUPREME COURT OF THE
STATE OF WASHINGTON
SEPTEMBER SESSION A.D. 1961

No. 34735

Spokane County No. 15910

THE STATE OF WASHINGTON, *Respondent*,
v.
RAYMOND L. HAYNES, *Appellant*.

Judgment—November 10, 1961

This cause having been heretofore submitted to the Court, upon the transcript of the record of the Superior Court of Spokane County, and upon the argument of counsel, and the court having fully considered the same, and being fully advised in the premises, it is now, on this 10th day of November, A.D. 1961, on motion of John J. Lally, Prosecuting Attorney, of counsel for respondent, considered, adjudged and decreed, that the judgment of the said Superior Court be, and the same is, hereby affirmed.

And it is further ordered, that this cause be remitted to the said Superior Court for further proceedings, in accordance herewith.

(Clerk's Certificate to foregoing paper omitted in printing)

No. 1022 Misc., October Term, 1961

RAYMOND L. HAYNES, *Petitioner*,

vs.

WASHINGTON

Order Granting Motion for Leave to Proceed In Forma Pauperis and Granting Petition for Writ of Certiorari—May 28, 1962

ON PETITION FOR WRIT OF CERTIORARI to the Supreme Court of the State of Washington.

ON CONSIDERATION of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 1002.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Frankfurter took no part in the consideration or decision of this motion and application.

☆ U. S. GOVERNMENT PRINTING OFFICE 1962—661195/P. O. 408

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
NOV 21 1962
JOHN F. DAVIS, CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 147

RAYMOND L. HAYNES,

Petitioner,

vs.

THE STATE OF WASHINGTON,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF FOR THE PETITIONER

FRANCIS HOAGUE
Counsel for Petitioner
1410 Hoge Building
Seattle 4, Washington

Of Counsel:
WILLIAM L. DWYER
DAVID SKELLENGER
LEROY C. KINNIE

SUBJECT INDEX

Page

BRIEF FOR THE PETITIONER

Opinions Below 1

Jurisdiction 1

Question Presented 2

Constitutional Provisions and Statute Involved 3

STATEMENT OF THE CASE

Facts 3

Trial and Appeal 6

ARGUMENT

I. Uncontroverted Facts 7

II. Due Process of Law is denied by the admission into evidence of a "confession" obtained under these circumstances 14

III. The conviction should be set aside even though other evidence at the trial supported petitioner's guilt 19

Conclusion 21

TABLE OF CASES

Ashcraft v. *Tennessee*, 322 U. S. 143, 88 L. ed. 1192 (1944) 17

Betts v. *Brady*, 316 U. S. 455, 86 L. ed. 1595 (1942) 15

Chandler v. *Fretag*, 348 U. S. 3, 99 L. ed. 4, 75 S. Ct. 1 (1954) 15

Colombe v. *Connecticut*, 367 U. S. 568, 6 L. ed. 2d 1037, 81 S. Ct. 1860 (1961) 18

Fikes v. *Alabama*, 352 U. S. 191, 1 L. ed. 2d 246, 77 S. Ct. 281 (1957) 18

Gallegos v. *Nebraska*, 342 U. S. 55, 96 L. ed. 86, 72 S. Ct. 141 (1951) 14

Page

Malinski v. *New York*, 324 U. S. 401, 89 L. ed. 1029 (1945) 19, 20
Powell v. *Alabama*, 287 U. S. 45, 77 L. ed. 158 (1932) 14, 15
Reck v. *Pate*, 367 U. S. 433, 6 L. ed. 2d 948, 81 S. Ct. 1541 (1961) 18-19
Rogers v. *Richmond*, 365 U. S. 534, 5 L. ed. 2d 760, 81 S. Ct. 735 (1961) 19, 20
Spano v. *New York*, 360 U. S. 315, 3 L. ed. 2d 1265, 79 S. Ct. 1202 (1959) 17, 19
Tomkins v. *Missouri*, 323 U. S. 485, 89 L. ed. 407 (1945) 14
Warickshall's Case, 1 Leach 263, 168 Eng. Rep. 234 (K. B. 1783) 17
Williams v. *Kaiser*, 323 U. S. 471, 89 L. ed. 398 (1945) .. 14

TABLE OF CONSTITUTIONAL PROVISION AND STATUTE

U. S. Constitution, Amendment XIV 3
Revised Code of Washington, Sec. 9.33.020(5) 3, 16

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 147

RAYMOND L. HAYNES,

Petitioner.

vs.

THE STATE OF WASHINGTON,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF FOR THE PETITIONER

Opinions Below

The opinion of the Supreme Court of the State of Washington is reported in 58 Wn. 2d 716, 364 P. 2d 935 (1961), and was filed September 14, 1961. It is in the record (R. 139-168). Five judges joined in affirming the trial court (R. 139-148). Four judges dissented in three opinions (R. 149-168).

Jurisdiction

The opinion of the Supreme Court of the State of Washington which is sought to be reviewed was filed September 14, 1961. A petition for rehearing was denied November

8, 1961 (R. 169). The judgment was entered November 10, 1961 (R. 170). The Petition for Certiorari was filed February 8, 1962. On November 9, 1961, an order was entered granting a Stay of Execution and Enforcement of Judgment for a period of ninety days to allow this Petition (R. 169-170).

The jurisdiction of this Court is invoked under 28 U. S. C. §1257(3), since the rights, privileges and immunities specially established by the Fourteenth Amendment to the Constitution of the United States have been denied.

Question Presented

Was there a denial of due process of law, as required by the Fourteenth Amendment of the United States Constitution in a criminal proceeding where a confession of the accused was admitted in evidence and:

(1) The confession was signed after several hours of interrogation, and approximately 19 hours of incommunicado detention of petitioner, during which time petitioner repeatedly requested the right to consult an attorney and to call his wife, and during which time he was told by police that he could not call his wife until he was booked and that he could call an attorney only if he cooperated and signed a confession.

(2) It is established police practice to deny any communication with the outside world to a person arrested while he is "booked for investigation" or "booked on an open charge" until the investigation has been concluded.

(3) The petitioner was kept incommunicado for a total period of 5 to 7 days, despite requests that he be allowed telephone calls.

The judgment of the Supreme Court of the State of Washington was that the admission of the confession evidence did not deprive petitioner of the due process of law required by the Fourteenth Amendment to the Constitution of the United States.

Constitutional Provisions and Statute Involved

Amendment XIV to United States Constitution:

"... nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Revised Code of Washington, Section 9.33.020(5):

"No officer or person having the custody and control of the body or liberty of any person under arrest, shall refuse permission to such arrested person to communicate with his friends or with an attorney, nor subject any person under arrest to any form of personal violence, intimidation, indignity or threats for the purpose of extorting from such person incriminating statements or a confession. Any person violating the provision of this section shall be guilty of a misdemeanor." Laws of 1909, C. 249, §359.

STATEMENT OF THE CASE

Facts

On the evening of December 19, 1957, a service station in the City of Spokane, Washington, was robbed by two men at approximately 9:05 o'clock P.M. (R. 32-33). At 9:15 o'clock P.M., petitioner's brother, Keith Haynes, was arrested by an officer of the Spokane Police Department

in an area adjacent to the service station. At 9:30 o'clock P.M., the petitioner was arrested by another police officer approximately five blocks away from the service station (R. 40). Petitioner had consumed a substantial quantity of beer and was emotional and crying after arrest (R. 49-50, 105). A policeman testified that on the way to the police station, petitioner admitted the robbery (R. 41). At the police station, the brothers were booked for investigation, which is known to the Police Department of Spokane as being placed on the "small book". This by local practice means that no phone calls whatsoever and no visitors are allowed to prisoners (R. 56-57, 67, 69). He was questioned by two police officers who pressed him for a statement of guilt. He asked several times for permission to phone a lawyer (R. 97, 105), but he was told that only if he "cooperated" and made a statement could he phone (R. 97). When he asked permission to phone his wife, he was given the same answers (R. 99-100, 105, 107). He was not allowed to phone that night or the next day, Friday, when he was interrogated by police detectives for approximately one and a half to two hours (R. 69). When he again repeatedly asked to call his wife, he was refused (R. 88, 99-100) and was again told that if he "cooperated" and made a statement, he could be booked on a specific charge and then could call his wife (R. 100). Early in his interrogation, he asked "Can't I talk to the prosecutor before I go any further with this statement?" To this the detective replied, "We just want to get this down for our records, and then we will go to the prosecutor's office and he will ask the same questions that I am" (R. 85, 136). He thereupon dictated a statement admitting his participation in the robbery. A portion of this statement is quoted:

> "Q. After it is typed up, will you be willing to sign it as the truth after it has been read by you? A. Yes.

Q. Have we made you any threats or promises? A. No.

Q. Has any police officers made you any promises or threats? A. No—except that the Lieutenant promised me that as soon as I was booked that I could call my wife.

Q. You are being held for investigation—you haven't been booked yet. When you are, you will be able to phone your wife" (R. 87-88, 138).

He was taken to the office of the County Prosecutor where he was again asked to make another statement (R. 100). He did so, but again refused to sign it, because he had not been allowed to call his wife to see about a lawyer (R. 101, 107). He was again promised that he would subsequently be allowed to call. He then signed the stenographic transcript of the statement previously made at the City Jail, which is Exhibit 6 herein, but refused to sign the new one (R. 101). He still was not allowed to make a telephone call (R. 100). He was then taken for his preliminary hearing before a magistrate at approximately 4:00 o'clock P.M. on the day after arrest.

He was charged with robbery, bound over, and transferred to the County Jail where he was confined until either the following Tuesday or Thursday, December 24 or December 26, when he was returned to the Prosecutor's Office and again asked to sign the statement previously made there. He again refused on the ground that the promises of the police that he be allowed to phone his wife had not been fulfilled (R. 101). At this time, either on December 24 or December 26, five or seven days after his arrest, the petitioner was for the first time allowed to telephone his wife (R. 101).

At no time, from his arrest on December 19 until either December 24 or December 26, was petitioner allowed to

communicate with anyone outside, despite his repeated requests to be allowed to do so. Petitioner's wife had telephoned the City Jail around noon on the day after the robbery. She was refused any information, except the fact that petitioner was being held, and was referred to the "morning paper" for information (R. 131).

At the trial, the police officers admitted that, until the confession had been signed, petitioner was confined "under the small book" which prohibited all visitors and precluded communication with the outside world (R. 56-57, 67, 69).

Trial and Appeal

On February 20, 1958, an Information was filed in the Superior Court for Spokane County charging petitioner, Raymond L. Haynes, and his brother, Keith E. Haynes, with the crime of robbery (R. 1). A jury trial was had, beginning March 19, 1958, in Superior Court for Spokane County, finishing on March 21, 1958, with a verdict of guilty. Upon the trial at the time, the State offered plaintiff's Exhibit 6, the purported confession of petitioner, Raymond L. Haynes. Objections were made to the admission of this exhibit upon the ground that it violated the constitutional rights of the defendant with respect to self-incrimination and forced defendant to offer evidence against himself (R. 79). The objection was overruled, and the exhibit was admitted in evidence (R. 80). At the close of the evidence, and after instruction, a guilty verdict was returned (R. 21). Thereafter, on March 24, 1958, motions for new trial and arrest of judgment were filed, and after argument, were denied on March 28, 1958 (R. 22). On May 19, 1958, petitioner, Raymond L. Haynes, was sentenced to Washington State Penitentiary for not more than twenty years (R. 24-25). On the same date, May 19, 1958, the

petitioner filed and served his notice of appeal to the Supreme Court of the State of Washington from the judgment, sentence, and commitment (R. 26).

Upon appeal the State argued that the objections made to prevent the confession from being considered by the jury did not specifically raise the question of whether the confession was made voluntarily. The State Supreme Court held that this issue had been sufficiently raised to place this question before the trial court and that therefore it had been properly preserved for consideration on appeal (R. 140). The court went on to say that the circumstances under which the confession was obtained were within the restrictive limits of the Fourteenth Amendment to the United States Constitution. As to the police denial of permission to call an attorney, the court held that the absence of counsel during this pre-trial period did not so prejudice the petitioner "as to infect his subsequent trial with an absence of 'that fundamental fairness essential to the very concept of justice.'" The court affirmed the judgment of the trial court. Four of the nine judges dissented on the ground that the confession should not have been admitted in evidence.

ARGUMENT

I.

Uncontroverted Facts.

Since this Court accepts as final the findings of the State Court unless they are in conflict with uncontested evidence, it is necessary to go into some detail as to the evidence relating to the circumstances surrounding the signing of the confession. At least four police officers and one deputy prosecuting attorney dealt with petitioner from the time

of his incarceration until after the confession had been signed.

Officer Pike who was in the police detective office with petitioner and in the next room when the line-up took place (R. 51).

Lieutenant Wakely, a detective who interrogated petitioner the evening of the robbery (R. 52-53).

Officers Cockburn and Peck, who interrogated the petitioner the next morning (R. 62-63).

Mr. Carroll D. Gray, deputy prosecutor for Spokane County who interrogated petitioner early the next afternoon (R. 75-77, 100, 108).

Lieutenant Wakely, and later Officer Cockburn, both called by the prosecution, testified that while a prisoner is in the City Jail being interrogated, he is booked on an "open charge" or in plain language, held without charge for investigation (R. 56-57, 69). This is called by police officials as being booked on the "Small Book" (R. 56). They further testified that while a person is on the "Small Book", he may make no telephone calls and may receive no visitors (R. 56-57, 69). In other words, it is the set rule in Spokane that while a prisoner is under investigation, he is kept totally incommunicado.

Petitioner was kept under the "Small Book" from 9:20 o'clock P.M. until approximately 4:00 o'clock P.M. the next day when after signing a confession, he was taken before a magistrate and charged with robbery. His testimony as to events during the evening of his arrest was as follows (R. 96-97):

"Q. You say you remember talking to these two officers. What do you mean by that? A. Well, I really didn't mean anything, just that—well,—

Q. Were they interrogating you? A. I hadn't got that far yet.

Q. Just go ahead. A. I just found myself in the interrogation room.

Q. All right. A. They kept wanting me to own up to robbing a Richfield Service Station and I asked Mr. Pike several times if I could call a lawyer and he said if I cooperated and gave him a statement—I cannot testify as to his exact words he used—I can only testify to general conversations.

Q. All right. A. After I made a statement—I don't remember at that time him specifying that if I signed it or not—that I would be allowed to call, to make a phone call, and I decided I didn't want to call an attorney because I didn't know an attorney that I figured was qualified and I didn't know if the police department had notified my wife at my residence and I didn't know if she had made any arrangements to contact me an attorney."

Later in his testimony regarding the interrogation on the morning after his arrest, he testified as follows (R. 99-100):

"Q. Did the officers at that time, state whether or not the officers at that time asked you to give them a statement. A. Yes.

Q. And what was your answer to that? A. I wanted to call my wife.

Q. And were you allowed to call your wife? A. No.

Q. This was on Saturday? Strike that. This was on Friday? A. Friday.

Q. December 20th? A. Yes.

Q. And was anything else said with respect to making a telephone call? A. Mr. Pike and the other offi-

cer both told me that when I had made a statement and cooperated with them that they would see to it that as soon as I got booked I could call my wife.

Q. Well, that was the night before you were told that, wasn't it? A. I was told that the next day, too, several times.

Q. Who were the officers that were with you? A. Oh, not Mr. Pike. Mr. Cockburn and Mr. Peck, I believe."

Even the confession, Exhibit 6, taken in shorthand by a police stenographer, typed by her, notarized by the deputy prosecutor and witnessed by Officer Cockburn, contains the following colloquy with the petitioner (R. 138):

"Q. After it is typed up, will you be willing to sign it as the truth after it has been ready by you? A. Yes.

Q. Have we made you any threats or promises? A. No.

Q. Has any police officers made you any promises or threats? A. No—except that the Lieutenant promised me that as soon as I was booked that I could call my wife.

Q. You are being held for investigation—you haven't been booked yet. When you are, you will be able to phone your wife."

In the face of petitioner's testimony of repeated requests to four policemen for permission to phone an attorney or his wife, the prosecution introduced no rebuttal testimony. In the prosecution's case in chief, Officer Peck did not testify. Officer Pike had testified but was asked nothing about petitioner's requests to phone an attorney or his wife. Lieutenant Wakely on cross-examination had testified (R. 56):

"Q. Did he ask permission to make a phone call himself to his wife? A. He may have. I don't remember exactly whether he asked or whether we wouldn't notify his wife."

Officer Cockburn, an interrogator on the morning after the arrest, testified (R. 68):

"Q. Now at 9:30 in the morning of December 20th, was the first time you had occasion to talk to Raymond Haynes? A. To my best recollection, that was the first time I ever saw him.

Q. During that conversation, Officer, did he ask permission from you to make a telephone call to his wife? A. I don't remember him asking me.

Q. Could he have asked permission to make a telephone call? A. He could have.

Q. You just don't remember? A. I don't remember him asking me.

Q. While you were interrogating the defendant, Raymond Haynes, did he make a statement to you in substance and effect that he would make a statement or would tell you what you wanted to know if you would let him make a phone call to his wife? A. I don't remember.

Q. At the time you were interrogating the defendant, Raymond Haynes, did you make a statement to him; in effect, that you can't make a phone call until we get a statement? A. I don't remember making any such statement."

Cockburn's answer quoted above is the only State's evidence touching petitioner's testimony that the police conditioned permission to make a phone call on the making of a signed confession. It is not a denial of such a condition but only that he did not remember making such a statement.

This cannot, moreover, be interpreted as a denial of petitioner's positive testimony that other members of the police department did impose this condition. It should be borne in mind that Cockburn was present when Exhibit 6 was dictated and later when he, Cockburn, signed Exhibit 6 as a witness. It must be assumed that he heard Lieutenant Wakeley deny petitioner the right to phone until after the "investigation" had been completed when he would be booked. Yet he testified that he did not remember any request to call his wife.

In the face of this strong testimony, the sole testimony of Officer Cockburn that he did not remember petitioner making such request although "he could have" is not sufficient to contradict petitioner's testimony that he was told that only after he signed a confession could he make a phone call. This is particularly true in the light of the "Small Book" rules of the Police Department.

It is also noteworthy that, when before Deputy Prosecutor Gray to sign the statement given to the police, petitioner gave a second statement which was taken down by a stenographer. When he was asked to sign this he refused and asked permission to call his wife (R. 100). He further testifies (R. 101):

> "I told him all the promises of all the officers I had talked to had not been fulfilled, and I had not been able to call my wife and I would sign nothing under any conditions until I was allowed to call my wife to see about legal counsel" (R. 101).

Mr. Gray, although a witness in the case in chief, was not called to refute this testimony. Thereafter petitioner was not allowed to make a telephone call until 5 or 7 days after his arrest.

It is submitted that the record shows the following incidents as unchallenged:

(1) That petitioner repeatedly asked at least four policemen for permission to call (a) an attorney, and (b) his wife.

(2) That permission was continually refused, in accordance with set police policy regarding a man being held for investigation.

(3) That at least some policemen told petitioner that he could not call his wife or an attorney until he "cooperated" and gave a statement.

(4) That in fact he was not allowed to make a phone call until either five or seven days after his arrest, when there remained a typed confession which petitioner refused to sign.

(5) That at the trial, Officer Cockburn testified merely that he could not remember petitioner making a request to call his wife, although he admittedly was present during the dictation of Exhibit 6, which contains a reference to petitioner's earlier request to phone his wife.

(6) That petitioner, before dictating the implicating portions of Exhibit 6, requested to talk to the Prosecuting Attorney before going any further with the statement. The police denied this request until after "we get this down for our records."

(7) The record fails to show any advice to petitioner as to his right to remain silent or any caution that what he said might be used against him.

The opinion of the court below, while making no findings either way, stresses that the State does not concede that permission to call his wife or an attorney was conditioned on his signing the confession (R. 143). This may not have

been conceded by the State's attorney in argument to the court below, but no evidence whatsoever was introduced by the State contradicting petitioner's explicit testimony in this regard. His testimony, not only stands uncontradicted but is strongly supported by the testimony of the State's witnesses and by the State's Exhibit 6.

As this Court stated in *Gallegos* v. *Nebraska*, 342 U. S. 55, 96 L. ed. 86, 72 S. Ct. 141 (1951) at page 61:

> "The state's ultimate conclusion on guilt is examined by due process standpoint in the light of facts undisputed by the state. That means not only admitted facts but also those that can be classified from the record as without substantial challenge."

II.

Due Process of Law Is Denied by the Admission Into Evidence of a "Confession" Obtained Under These Circumstances.

This Court has decided numerous cases in which it has been held that denial of the right to counsel can under certain circumstances constitute a deprivation of procedural due process. *Tomkins* v. *Missouri*, 323 U. S. 485, 89 L. ed. 407 (1945); *Williams* v. *Kaiser*, 323 U. S. 471, 89 L. ed. 398 (1945); *Powell* v. *Alabama*, 287 U. S. 45, 77 L. ed. 158 (1932). The right to counsel, if it is to be meaningful must mean not only a right to counsel at the time of trial but also the right to communicate with counsel from the moment of arrest. Immediately after arrest, a suspect's rights are in substantially greater jeopardy than at the time of trial when he is surrounded by the safeguards inherent in a court proceeding. When he is first arrested, he is subject to the psychological pressures necessarily arising from the fact of being arrested, that is, being forcibly in the hands and

under the control of an organization stronger and with greater resources by far than the suspect. This creates a pressure, necessarily and properly, but a pressure nonetheless to acquiesce in the demands of his captors. It is at that time that an attorney is a necessity, if a suspect's constitutional rights are to be given any meaningful protection. Then an attorney can not only advise him and assure him of his rights and duties, but, not being himself under arrest, he can take whatever action is necessary to prevent an infringement of such rights. Without an attorney the arrested man is subject to whatever pressures the police wish to impose. As was stated in *Powell* v. *Alabama*, 287 U. S. 45, 77 L. ed. 158 (1932):

> "He requires the guiding hand of counsel at every step in the proceedings against him."

We are not here concerned with the duty of the state to supply counsel for indigent persons, as to which there is only a qualified right, *Betts* v. *Brady*, 316 U. S. 455, 86 L. ed. 1595 (1942), but with the right of a prisoner to consult with counsel of his own choosing. *Chandler* v. *Fretag*, 348 U. S. 3, 99 L. ed. 4, 75 S. Ct. 1 (1954). In that case this Court stated:

> "Regardless of whether petitioner would have been entitled to the appointment of counsel, his right to be heard through his counsel was unqualified" (p. 9).

A necessary corollary is that he be allowed to consult with counsel of his choice at such time as *he* feels he needs to—in the instant case, shortly after his arrest.

Petitioner asked to phone an attorney and then later, thinking that his wife might have retained an attorney, he requested to phone his wife. The police, following the established practice in Spokane, told him that after he

had made a statement and been arraigned, he could call his wife. The petitioner's desire to get away from the police and to someone who might get him an attorney is shown by his remark recorded in Exhibit 6:

> "Q. Then, what happened? A. Can't I talk to the Prosecutor before I go any further with this statement" (R. 85, 136).

And it is interesting to note the police answer to this:

> "Q. We just want to get this down for our records, and then we will go to the prosecutor's office and he will ask the same questions that I am."

In other words, "There is no point in your seeing the prosecuting attorney, he will ask you the same questions as we are."

By means of the carrot of the promise that he could call his wife, and the stick of being kept incommunicado, petitioner was induced to dictate and sign Exhibit 6. Exhibit 6 is the fruit of Spokane's illegal but effective policy of "Small Book" procedure. This procedure violates the Constitution of the United States and specifically violates a statute of Washington. R. C. W. 9.33.020(5) makes it a misdemeanor for police, having custody of a person under arrest, to "refuse permission to such arrested person to communicate with his friends or with an attorney," when such refusal has the purpose of extorting a confession. Violation of this statute is exactly what the Spokane policy "Small Book" policy requires of the arresting officer, to refuse access to friends or an attorney until the investigation is completed. This is an indication of the determination of the police department to extract a confession, come what may. After completion of the investigation, there is little benefit that can be afforded by counsel, if the prose-

cution can introduce in evidence the fruits of the police illegality.

It must be realistically assumed, at least in the absence of evidence to the contrary, that had petitioner been allowed to call an attorney, Exhibit 6 would never have been dictated or signed. It is not difficult to determine why Spokane police maintained the "Small Book" rule, and why they carried out this policy with regard to petitioner's requests. It is also not difficult to see why petitioner signed Exhibit 6. From his standpoint he had no alternative, for until he signed he could have no communication with the outside world.

An involuntary confession was defined in 1783 in *Warickshall's Case*, 1 Leach 263, 168 Eng. Rep. 234 (K. B. 1783) as one "forced from the mind by the flattery of hope, or by the torture of fear." Both factors are present in the instant case: (1) the hope of communication with the outside world, and (2) the fear of indefinite incommunicado detention until he "cooperated". As was found by this Court in *Ashcraft* v. *Tennessee*, 322 U. S. 143, 88 L. ed. 1192 (1944):

> "We think a situation such as that here shown by uncontradicted evidence is so inherently coercive that its very existence is irreconcilable with the possession of mental freedom by the lone suspect against whom its full coercive force is brought to bear" (p. 154).

In *Spano* v. *New York*, 360 U. S. 315, 3 L. ed. 2d 1265, 79 S. Ct. 1202 (1959) this Court reversing a conviction based in part on an involuntary confession, stated:

> "The abhorrence of society to the use of involuntary confessions does not turn alone on this inherent untrustworthiness. It also turns on the deep rooted feeling that police must obey the law while enforcing the

law; that in the end life and liberty can be as much endangered from illegal methods used to convict those thought to be criminals as from the actual criminals themselves" (pp. 320-321).

The danger is even more evident in Spokane where the illegality is a part of the openly established police department "small book" procedures.

The effort to get the confession in writing came long after the police "knew" petitioner was guilty of the crime. They had ample evidence by the time they arrived at the police station, and certainly after petitioner had been identified in the line-up. But, as Judge Foster of the Court below states in his dissent:

> "The desire to wrap up the case with a confession was irresistible, and the unconstitutional course of conduct was pursued" (R. 166).

If in truth "ours is an accusatorial and not an inquisitorial system", it must be held that the introduction of Exhibit 6 in evidence, constituted a denial of a fair hearing and therefore of due process of law.

We do not submit this case solely on the basis of the denial of petitioner's request to phone counsel or his wife, nor solely upon the detention incommunicado nor solely on the police promise that petitioner could call his wife if he made a statement, nor solely upon the repeated interrogation in the absence of any advice as to the consequences of a statement or as to the right to remain silent. But the totality of these circumstances presents a picture of substantial pressure overbearing petitioner's free will. *Colombe* v. *Connecticut*, 367 U. S. 568, 6 L. ed. 2d 1037, 81 S. Ct. 1860 (1961); *Fikes* v. *Alabama*, 352 U. S. 191, 1 L. ed. 2d 246, 77 S. Ct. 281 (1957); *Reck* v. *Pate*, 367 U. S. 433,

6 L. ed. 2d 948, 81 S. Ct. 1541 (1961); *Rogers* v. *Richmond*, 365 U. S. 534, 5 L. ed. 2d 760, 81 S. Ct. 735 (1961).

It cannot seriously be maintained that the methods used by the police in this case are necessary to protect society from the threat of crime going undetected. The crime here involved had been detected, the suspects apprehended in the near vicinity of the crime within minutes of the commission of the crime, and the victim of the crime had identified petitioner positively. Up to this point the police behavior had been efficient, alert, intelligent, successful and completely within the Anglo-American accusatorial criminal framework. But then overzealousness goaded them into inquisitorial fields that were clearly unnecessary and way beyond the bounds of good police procedures. Due process requires that the fruits of these excesses be excluded from consideration at the time of trial.

III.

The Conviction Should Be Set Aside Even Though Other Evidence at the Trial Supported Petitioner's Guilt.

In the Brief in Opposition to the Petition for Writ of Certiorari, the state emphasized the fact that there was testimony that petitioner admitted his guilt shortly after his arrest and again upon being questioned at the police station on the same night, and that there was very positive identification of petitioner by the victim of the robbery. However, the reason in excluding an involuntary confession is not because of its unreliability or untruthfulness, but because the methods used offend our basic notions of a fair trial. *Rogers* v. *Richmond*, 365 U. S. 534, 5 L. ed. 2d 760, 81 S. Ct. 735 (1961); *Malinski* v. *New York*, 324 U. S. 401, 89 L. ed. 1029 (1945); *Spano* v. *New York*, 360 U. S. 315, 3 L. ed. 2d 1265, 79 S. Ct. 1202 (1959). This being so,

a conviction, based even in part upon a coerced confession, should be reversed without regard to the persuasiveness of the balance of the evidence.

In *Malinski* v. *New York*, 324 U. S. 401, 89 L. ed. 1029 (1945), this Court said:

> "And if it [the coerced confession] is introduced at the trial, the judgment of conviction will be set aside even though the evidence apart from the confession might have been sufficient to sustain the jury's verdict" (p. 404).

In *Rogers* v. *Richmond*, 365 U. S. 534, 5 L. ed. 2d 760, 81 S. Ct. 735 (1961), this Court said:

> "Indeed, in many of the cases in which the command of the Due Process Clause has compelled us to reverse state convictions involving the use of confessions obtained by impermissible methods, independent corroborating evidence left little doubt of the truth of what the defendant had confessed. Despite such verification, confessions were found to be the product of constitutionally impermissible methods in their inducement" (p. 541).

In the present trial, the importance of the written confession as contrasted to the oral confessions was that it went as an exhibit into the jury room, whereas the testimony as to oral confessions went there only in the memories of the jurors, and was subject to whatever doubts the jurors may have had as to the credibility or accuracy of the police witnesses. Exhibit 6 was an important part of the trial. We do not speculate as to whether the jury would have convicted petitioner in its absence. The conviction was infected with the illegality of police methods in obtaining Exhibit 6. It therefore was lacking in due process and should be reversed.

Conclusion

For the foregoing reasons, it is respectfully submitted that the judgment of the court below should be reversed and the case remanded for a new trial with directions to exclude Exhibit 6 from the evidence if it is offered.

FRANCIS HOAGUE
Counsel for Petitioner
1410 Hoge Building
Seattle 4, Washington

Of Counsel:

MACDONALD, HOAGUE & BAYLESS

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
DEC 28 1962
JOHN F. DAVIS, CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 147

RAYMOND L. HAYNES, *Petitioner,*

v.

STATE OF WASHINGTON, *Respondent.*

MISC. NO. 1022

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF FOR THE RESPONDENT

JOSEPH J. REKOFKE

JOHN J. LALLY

GEORGE A. KAIN

Spokane County Court House
Spokane, Washington

Counsel for Respondent.

SUBJECT INDEX

Page

Table of Cases ..... *i, ii*

Respondent's Statement of the Case 1

Questions For Review 9

Argument

I. Disputed Factual Issues Decided in the Courts of the State of Washington 9

II. Absence of Circumstances which Render a Confession Involuntary and Inadmissible 17

Conclusion 26

TABLE OF CASES

Ashcraft v. Tennessee, 322 U.S. 143, 88 L. Ed. 1192, 64 S. Ct. 921 (1944) 20, 21, 25

Chambers v. Florida, 309 U.S. 227, 84 L. Ed. 716, 60 S. Ct. 472 (1940) 21

Cicenia v. LeGay, 357 U.S. 504, 2 L. Ed. (2d) 1523, 78 S. Ct. 1297 (1958) 20

Crooker v. California, 357 U.S. 433, 2 L. Ed. (2d) 1448, 78 S. Ct. 1287 (1958) 21

Fikes v. Alabama, 352 U.S. 191, 1 L. Ed. (2d) 246, 77 S. Ct. 281 (1957) 20, 22

TABLE OF CASES (Cont'd)

Page

Gallegos v. Colorado, U.S. , 8 L. Ed. (2d) 325, 82 S. Ct. 21, 22, 23, 25

Haley v. Ohio, 332 U.S. 596, 92 L. Ed. 224, 68 S. Ct. 302 (1948) 20, 21, 22, 23, 24

Harris v. South Carolina, 338 U.S. 68, 93 L. Ed. 1815, 69 S. Ct. 1354 (1949) 21, 22

Payne v. Arkansas, 356 U.S. 560, 2 L. Ed. 975, 78 S. Ct. 844 (1958) 21

Reck v. Pate, 367 U.S. 433, 6 L. Ed. (2d) 948, 81 S. Ct. 1541 (1961) 17, 18, 19, 21

Spano v. New York, 360 U.S. 315, 3 L. Ed. (2d) 1265, 79 S. Ct. 1202 (1959) 21, 22

Turner v. Pennsylvania, 338 U.S. 62, 93 L. Ed. 1810, 69 S. Ct. 1352 (1949) 21

Watts v. Indiana, 338 U.S. 49, 93 L. Ed. 1801, 69 S. Ct. 1341 (1949) 16, 20

STATUTES

Revised Code of Washington, Sec. 9.33.020(5) 19

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 147

RAYMOND L. HAYNES, *Petitioner,*

v.

STATE OF WASHINGTON, *Respondent.*

MISC. NO. 1022

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF FOR THE RESPONDENT

RESPONDENT'S STATEMENT OF THE CASE

A robbery in progress was reported to the Spokane Police Department on the 19th day of December, 1957 at approximately 9:05 p.m. (R. 30-35). The description of one of the two persons involved was broadcast over the police radio (R. 40). Approximately 25 minutes after the report of the robbery, a uniformed policeman observed the petitioner walking away from the scene of the robbery (R. 40). As the police car approached the petitioner, he walked into the yard of a home. He was then summoned by one of the police officers and briefly questioned. The petitioner indicated that "he lived there" (R. 40). The petitioner

then pretended to open the door of that house, but the police car did not leave, and the officers kept the petitioner under surveillance. Petitioner then walked back down the sidewalk from the house and stated to the officers, "You got me, let's go." (R. 40). The petitioner was placed in the police car, where he admitted the robbery itself (R. 41, 48). The petitioner was taken in the police car to the scene of the robbery, where he admitted to the uniformed policeman that this was the service station he had robbed (R. 41). There is nothing in the record to indicate that this confession was coerced. The petitioner was taken by the uniformed officers to the Spokane City Police station, where he arrived some 20 minutes after his surrender (R. 49).

Lieutenant Wakeley of the Spokane City Police Department was in charge of the detectives' office on the shift between 4 p.m. and 12 midnight (R. 52, 56). Lieutenant Wakeley talked to the petitioner at 10:00 p.m., or slightly thereafter on December 19, 1957 (R. 52, 54). The petitioner admitted that he and his brother had been looking for a place to "hold up" that evening (R. 53). The petitioner then made an oral confession to Lieutenant Wakeley as follows (R. 53, 54):

> "A (by Lt. Wakeley) He said they decided to hold up a place so they drove around to find some place that didn't seem to have any customers and they didn't know the streets, didn't know the town very

well. They said they were out where they found the car. They drove by and saw a service station which didn't seem to have any business, so they parked the car in the alley and walked into the service station, and Raymond said that he told the man it was a holdup and his brother stood behind the man and he got the money from the service station operator. He didn't think his brother got any of it. After they held up the place they ran out the door and he ran down the side street, not directly toward the car, down around toward the end of the block and come back down the alley and as he was approaching the car he saw a police officer had his brother in custody. So he turned and ran north about two blocks and then turned and went west about three blocks before a prowl car came along and they stopped and talked to him and asked him where he was going. He said he was going home and he turned and walked up onto a porch. He stood on the porch and he said the prowl car sat out there in the street, didn't move, so he thought well, I might as well give up. So he went back and told them he was the man they were looking for." (R. 53, 54).

Lt. Wakeley terminated this conversation, after obtaining the aforesaid confession, at 10:30 p.m. on the 19th of December, some 20 minutes to half an hour after he first saw the petitioner and after the petitioner was first brought to the city jail (R. 55). Thus, this oral confession was obtained approximately an hour after the petitioner's arrest, and after twenty minutes of questioning by Lt. Wakeley (R. 55). The petitioner made no request to call his wife during the aforesaid conversation (R. 56). The petitioner might have made such request *after* giving the confession,

and the petitioner was in fact told that his wife would be notified (R. 56). Nothing in the record indicates that the petitioner's wife was not notified by the Spokane Police Department of the petitioner's arrest. The record is void of any request by petitioner made to Lt. Wakeley to call an attorney. The petitioner in his testimony does not indicate that the confession and the facts surrounding the confession as related by Lt. Wakeley are in any manner incorrect. No objection was made to Lt. Wakeley's narration of the confession at the time of trial, (R. 53, 54). Lt. Wakeley talked to petitioner just this one time (R. 58).

Detective Pike was on duty from 4 p.m. to midnight on December 19th, 1957. Petitioner testified that he asked "Pike" several times if he could call a lawyer on the night of his arrest (R. 97). Detective Pike testified that he saw petitioner, was in the same room with him, but that *he did not talk with petitioner* (R. 51).

The petitioner and his brother, Keith Haynes, were placed in a "lineup." Apparently the petitioner was taken to jail about 11:00 p.m. on December 19, 1957, after having spent some 25 additional minutes while the lineup was in progress (R. 97, 98). According to the testimony of the petitioner, nothing else was done that night (R. 98). Nothing in the record indicates that petitioner was not permitted adequate food and rest. The following morning, December 20, at about

9:00 a.m., the petitioner was fingerprinted (R. 99). At approximately 9:30 a.m. the petitioner was questioned by detectives Peck and Cockburn on the day shift, for a period of about 1½ hours (R. 63, 67 and 99). At this time the petitioner again related orally the commission of the holdup by himself and his brother (R. 63-66). The testimony of the officer regarding this oral confession was admitted in evidence with no objection by the petitioner. The confession later admitted as Exhibit No. 6 (R. 81, 83-88), was recorded by a stenographer from 10:45 a.m. to 11:00 a.m. on December 20, 1957 (R. 75). This confession was later reduced to a typewritten transcript and admitted in evidence as Plaintiff's Exhibit No. 6 (R. 81, 83-88). During the time the confession was being recorded by the stenographer, the petitioner requested that he see the prosecuting attorney. He made no request to see any other attorney, and he made no request to call his wife (Ex. 6, R. 83-88). This written confession was nearly identical with the prior oral confessions. In this confession the petitioner was asked the following (R. 88):

> "Q. Have we (Detectives Cockburn and Peck) made you any threats or promises?
>
> A. No.
>
> Q. Has any police officer made you any promises or threats?
>
> A. No, except that the lieutenant promised me that as soon as I was booked that I could call my wife.

Q. You are being held for investigation. You haven't been booked yet. When you are you will be able to phone your wife."

The petitioner made no mention in the confession of any promise by Peck or Cockburn with respect to permitting the petitioner to phone his wife, or an attorney, nor any promise or refusal by Detective Pike, Plaintiff's Exhibit No. 6 (R. 81, 83-88).

Detective Cockburn testified that he could recall no such requests being made by the accused. Detective Peck was not called by either the petitioner or the respondent (R. 68).

Petitioner was taken to the office of Deputy Prosecutor Gray where he swore to and signed this confession (R. 76-77). After signing this confession, Plaintiff's Exhibit No. 6 (R. 83-88), the petitioner again confessed to Prosecutor Gray, this confession being in substance the same as the prior confessions (R. 108).

The petitioner testified that he was promised permission to call an attorney if he cooperated and gave a statement (R. 97). However, he also testified that in fact he did not want an attorney but merely sought to contact his wife (R. 106). The petitioner indicated that his only reason for not wanting to call an attorney was the possibility that his wife might have hired an attorney, and the petitioner did not want to be faced with the problem of having two attorneys (R. 106).

The petitioner at no time made a false statement to the authorities, nor did he ever refuse to give an oral confession. Nothing in the record indicates that he was at any time subjected to abuse, mistreatment or threats by any law enforcement authorities. The petitioner never denied the truth of any of his confessions to anybody (R. 107).

The petitioner testified that he had been convicted of the crimes of armed robbery, breaking and entering, drunk driving and resisting arrest. These admissions were in answer to the question, "Were you in any other trouble?" (R. 101). On cross examination the petitioner was asked if there was any other crime that he had been convicted of. The petitioner did not reply to this question. Finally, in answer to the specific questions detailing additional crimes, the petitioner admitted that he had been convicted of the crimes of taking a car without the owner's permission; likewise he finally admitted a record of conviction for jail-break (R. 108).

From the time of petitioner's presence in the tavern prior to the robbery, to the questioning by officers of the Spokane City Police, none of the persons who observed him felt that petitioner was effected by the liquor that he had consumed (R. 36, 38, 42, 45, 59, 51, 54, 60 and 111).

On December 20, 1957 the petitioner's wife by telephone questioned the authorities as to whether or not her husband was in jail, and she was informed that he was. Upon asking *why* petitioner was in jail, she was refused further information over the telephone. She was referred to the newspapers for information as to *why* he was in jail. She did not ask that the police take a message to the petitioner. She did not ask the police for permission to call him. She did not ask to visit with the petitioner, she did not telephone the city jail itself (R. 131). The petitioner's wife appeared at the Spokane city jail on December 21, 1957, at which time she talked to one of the investigating officers about the petitioner's automobile, but she did not at that time request to see the petitioner nor request that he be given a message, nor ask permission to call him, nor to call the jail (R. 131).

The petitioner called no witnesses from the Spokane City Jail to establish his conclusion that phone calls were "not allowed." Petitioner called no witnesses from the Spokane County Jail to establish his conclusion that phone calls were "not allowed." Petitioner never testified whether he had ever, in fact, asked any jailer for permission to use the telephone and there was no proof as to whom he asked when he made the request, if any, nor how many times he made the request, if he made one at all.

QUESTIONS FOR REVIEW

Was due process of law denied to the petitioner by the admission in evidence of a signed confession where the petitioner orally confessed immediately upon his surrender to the police, made two subsequent detailed oral confessions shortly after his surrender, dictated a written confession which he signed within 17 to 19 hours after his surrender; where the only allegation of coercion by the police was incommunicado detention during this period, and alleged permission of communication if the petitioner cooperated; and where there is conflicting evidence as to whether petitioner was denied communication, conflicting evidence as to whether any promises were made by the police; and where the petitioner was an adult person of average intelligence, with a background of considerable experience in the criminal law?

ARGUMENT FOR RESPONDENT

I. Disputed Factual Issues Decided in the Courts of the State of Washington.

The petitioner surrendered to Officer Usher of the Spokane Police Department. He confessed immediately upon his surrender to that officer (R. 40, 41). Lt. Wakeley, who saw the petitioner for about ½ hour on the evening of the arrest, testified as follows (R. 56):

"Q. Did Raymond Haynes at any time during that conversation ask permission to make a telephone call to his wife?

A. Not during the conversation.

Q. Well, at any time that night?

A. He might have asked afterward, after I got through talking to him. He wanted to know if his wife would be notified. I told him we would notify her that he was being held."

No request was made for an attorney by the petitioner. Nothing in the record indicates that petitioner's wife was not notified by the police as they promised to do. At the time of the dictation of his written confession the following morning, the petitioner was told that he could call his wife as soon as he was booked (R. 88).

Other than the foregoing, there is no evidence in the record of any denial of communication, nor any conditional promise of communication, *except by petitioner's own impeached, self-serving testimony, which is contradicted by the petitioner's own statements made prior to his testifying.*

The petitioner testified that Detective Pike, who was on duty from 4 p.m. until midnight on the evening of petitioner's surrender, made promises of communication to the petitioner, conditioned on cooperation, (R. 96, 97) and that he asked Pike several times for a lawyer (R. 96). Petitioner points out at page 10 of

Brief for the Petitioner that Pike testified, but was asked nothing about petitioner's request to telephone an attorney or his wife. The reason Pike was not asked these questions is obvious from the record inasmuch as Pike testified that he had never talked or associated with the petitioner (R. 50, 51). The petitioner in his testimony attributed statements to Detective Pike, made on the morning after his surrender. The petitioner's testimony shows however, that he confused Detective Pike, who was on duty from 4 until midnight on the 19th of December, with Detective Peck, who with Detective Cockburn first saw petitioner on the morning following (R. 100).

"Q. Who were the officers that were with you?

A. Oh, not Mr. Pike. Mr. Cockburn and Mr. Peck, I believe."

The foregoing indicates that any testimony regarding what Pike was told by the petitioner or what Pike said to the petitioner is obviously conflicting testimony.

Detective Cockburn testified that he did not remember the petitioner's ever having asked to telephone his wife and that he did not remember ever making any statement such as "You can't make a phone call until we get a statement." (R. 68). The respondent concedes that officer Cockburn's testimony did not constitute an absolute denial, yet on the other hand, in effect all Officer Cockburn testified to was that his

memory was not sufficient to answer the question. The petitioner "assumed" at page 12 of the Brief for the Petitioner that Detective Cockburn "heard Lieutenant Wakeley deny petitioner the right to phone until after the 'investigation' had been completed when he would be booked.", and petitioner implies that Cockburn's testimony to the effect that he could remember no promises, was thus untrue. However, Detective Cockburn could never have heard Lieutenant Wakeley say anything to the petitioner, because Lieutenant Wakeley saw the petitioner on the evening of the 19th of December and only that one time (R. 58), whereas Detective Cockburn saw the petitioner for the first time at 9:30 a.m. on the morning of the 20th of December (R. 68).

Petitioner on the basis of the foregoing argues at pages 11 and 12 of the Brief for the Petitioner that "Cockburn's answer . . . (indicating his inability to remember) is the only State's evidence touching petitioner's testimony that the police conditioned permission to make a phone call on the making of a signed confession . . ." The record, however, indicates the contrary. The petitioner's brief overlooks the very words of the petitioner which were a part of the State's evidence.

Detectives Peck and Cockburn were present (R. 83, 134) while the petitioner was dictating the confession

which was admitted in evidence, and the following occurred: Plaintiff's Exhibit No. 6 (R. 83-88 at 88):

> "Q. (By Cockburn and Peck) Have we made you any threats or promises?
>
> A. No."

The petitioner was asked by Detectives Peck and Cockburn if *we* had made any promises. Petitioner replied, *No*. The petitioner when he testified at the time of trial, for the first time attributed various promises to Detectives Cockburn and Peck. If, in fact, the petitioner had been promised anything by Cockburn and Peck, why did he not answer the specific question in this regard in the affirmative and then specify the promise or promises? Respondent submits that by reason of the petitioner's own sworn statement in which he denied to Detectives Peck and Cockburn that they had made any promises to him, that the evidence is conflicting as to whether or not promises were made by either of these two officers.

Petitioner's confession, Plaintiff's Exhibit No. 6 (R. 83-88 at 88), continues:

> "Q. Has any police officer made you any promises or threats?
>
> A. No, except that the lieutenant promised me that as soon as I was booked that I could call my wife."

Thus, when asked if *any* police officer had made any promises to him, the petitioner did not answer that Detective Pike had made promises, but only that Lieutenant Wakeley had made a "promise." This is in direct conflict with the petitioner's testimony to the effect that Detective Pike had made various promises to him.

The only promise then, according to petitioner's own statement as contained in the written confession, was that which petitioner attributes to Lieutenant Wakeley. That "promise" was merely a statement that petitioner could call his wife as soon as he was booked. This is nothing more than a statement of the departmental regulation. By petitioner's own words the "promise" carried no condition such as cooperation or confession. It called for nothing by the petitioner.

This "promise" specified by the petitioner was one that must have been made within one hour after the petitioner's surrender because Lieutenant Wakeley talked to the petitioner until about 10:30 on the evening of his arrest (R. 55) and saw him only that one time (R. 58). Thus petitioner by his own written statement, indicated that there were no promises after the statement he attributes to Lieutenant Wakeley and up until the time that he dictated the confession later introduced as Plaintiff's Exhibit No. 6 (R. 83-88).

The petitioner, after this confession was typed, swore to the truth of and signed the same on December

20th as being true (R. 76). The petitioner read Exhibit No. 6 and made changes therein (R. 76). The petitioner did *not* change the answers with respect to what promises were made to him by the police, indicating that no promises were made between the time the confession was dictated and the time that petitioner swore to the truth thereof.

Petitioner himself testified as to his post confession detention as follows (R. 100, 101):-

> "Q. When were you allowed to make a telephone call?
>
> A. I am not absolutely certain but it was either the Tuesday before Christmas, the 24th, or the Thursday after Christmas, the 26th."

There was no testimony that petitioner ever asked the Spokane City Police Jailer to make a telephone call, deliver a message, or write a letter. There is no testimony that petitioner ever asked the Spokane County Jailer for such permission. The only testimony hinges on the conclusion "not allowed."

Petitioner's wife called the Spokane Police and was told petitioner was in jail. Petitioner's wife asked the police *why* petitioner was being held. The police, who could not have known if in fact they were speaking to Mrs. Haynes, referred her to the newspapers for the reason *why* petitioner was in jail (R. 131). Petitioner's wife did not ask to visit him, did not ask that a message

be delivered to petitioner, did nothing more than ask *why* he was being held. The day following petitioner's surrender, his wife was personally present at the police station. She wanted petitioner's automobile. She made no attempt whatsoever to visit petitioner or deliver a message to him (R. 131). She later testified that she "first saw" petitioner one week after his surrender. She did not testify that she had ever made any attempts to visit petitioner, call petitioner on the telephone or have a message delivered to him (R. 131).

Thus the record indicates that the evidence was entirely conflicting with respect to the factual situation from which the confession later admitted in evidence as Plaintiff's Exhibit No. 6 (R. 83-88) emerged. This conflict in the evidence was decided in the state court system by a judge and a jury, whose physical presence permitted them to weigh the testimony of all of the witnesses. The trial court and the jury rejected the testimony of the petitioner, whose testimony was impeached by his hesitating admission to convictions of five serious crimes, and by his signed confession which conflicted with his own testimony as to the circumstances of his detention. The Supreme Court of the State of Washington reviewed these same facts.

The rule as set forth in the case of *Watts v. State of Indiana*, 338 U.S. 49, 93 L. Ed. 1801, 69 S. Ct. 1341 (1949) provides at page 51:

> " . . . there has been complete agreement that any conflict in testimony as to what actually led to a contested confession is not this Court's concern. Such conflict comes here authoritatively resolved by the State's adjudication. Therefore only those elements of the events and circumstances in which a confession was involved that are unquestioned in the State's version of what happened are relevant to the constitutional issue here . . . "

Respondent requests on the basis of the foregoing that petitioner be denied relief.

II. Absence of Circumstances Which Render a Confession Involuntary and Inadmissible.

The Supreme Court of the United States in the recent decision of *Reck v. Pate*, 367 U.S. 433, 6 L. Ed. (2d) 948, 81 S. Ct. 1541 (1961), again set forth the broad test for determining whether the Fourteenth Amendment has been violated with respect to a confession admitted in evidence in the trial court. At page 953 of 6 L. Ed. (2d) it is stated:

> "'. . . The question in each case is whether a defendant's will was overborne at the time he confessed. (Citing cases). If so, the confession cannot be deemed 'the product of a rational intellect and a free will,' (citing case). In resolving the issue all the circumstances attendant upon the confession must be taken into account . . ."

The totality of the circumstances surrounding the surrender, detention and interrogation of the petitioner, indicate that at all times his will was not to withhold

admission of his guilt but rather to confess his guilt. The only evidence to the contrary is the petitioner's own testimony in the trial court which, as has been pointed out, varied from his prior written statement in this regard.

The respondent requests that the facts as set forth in *Reck v. Pate,* supra, be compared with the facts as contained in the record in this case. At the time of petitioner's arrest, he voluntarily surrendered to the police, stating, "You got me, let's go." (R. 40). The petitioner confessed in the police car immediately after his arrest and pointed out the place of business which he had robbed, all of this while enroute to the police station (R. 41). The petitioner again confessed orally at the police station to Lieutenant Wakeley, and no requests of any kind were made by the petitioner before or during that confession (R. 53, 56). Petitioner might have requested his wife be called and was told his wife would be notified (R. 56). A third oral confession was given the following morning. The petitioner contends that requests for communication and promises of communication conditioned on cooperation were made at this time. The record indicates the contrary, as indicated in petitioner's own statement Plaintiff's Exhibit No. 6 (R. 83-88) in which he mentioned no such promises when asked. During the trial the three oral confessions were related by the officers, and no objection was made to this testimony. Although the petitioner contends that the written confession,

Plaintiff's Exhibit No. 6 (R. 83-88) the fourth in time, was obtained by coercion and against his will, the facts as set forth above indicate that the petitioner's will was actually to disclose his guilt from the moment of his arrest.

The only undisputed circumstances of this case are that there was a police department rule restricting communications with an accused who is booked only for investigation, that petitioner may have asked Lieutenant Wakeley to call his wife on the night of his surrender, that petitioner did want to know if his wife would be notified, that petitioner was told his wife would be notified (R. 56) and that petitioner was told he could call his wife when he was booked (R. 88). It is submitted that under the theory of the test set forth in the case of *Reck v. Pate*, 367 U.S. 433, 6 L. Ed. (2d) 948, 81 S. Ct. 1541 (1961), even though an accused is denied all communication while detained by the police, yet, unless the will of the accused to withhold confessing is overborne by such detention, then the confession is admissible. Likewise the fact that the petitioner was told his wife would be notified and that he could not call her until he had been booked does not per se render the confession inadmissible under the rule requiring a consideration of the totality of the circumstances surrounding the taking of the confession. Respondent makes the same argument with respect to the effect of R.C.W. 9.33.020 (5), making one who denies com-

munication guilty of a crime *if the denial is done for the purpose of extorting a confession.*

A brief consideration of those circumstances makes it clear that: there was no unwarranted delay in providing a preliminary hearing, as was the case in *Fikes v. Alabama*, 352 U.S. 191, 1 L. Ed. (2) 246, 77 S. Ct. 281 (1957); and *Haley v. Ohio*, 332 U.S. 596, 92 L. Ed. 224, 68 S. Ct. 302 (1948). There was no relay questioning by police such as can be found in the case of *Watts v. Indiana*, 338 U.S. 49, 93 L. Ed. 1801, 69 S. Ct. 1341 (1949), and *Ashcraft v. Tennessee*, 332 U.S. 143, 88 L. Ed. 1192, 64 S. Ct. 921 (1944). The total time of actual interrogation was approximately two hours and 20 minutes and during this time the petitioner made four actual confessions to the crime. A very different situation was presented in the case of *Fikes v. Alabama*, supra, *Haley v. Ohio*, supra, *Ashcraft v. Tennessee*, supra, *Watts v. Indiana*, supra and *Cicenia v. LeGay*, 357 U.S. 504, 2 L. Ed. (2d) 1523, 78 S. Ct. 1297 (1958). The total time of detention of the petitioner to the time of the signing of the confession which was admitted in evidence as Plainiff's Exhibit No. 6 (R. 83-88) was 17 to 19 hours. This is in sharp contrast to the factual situation in the cases just previously cited. The petitioner was allotted ample time for sleep and rest during the nighttime hours. He was not questioned until late into the night as occurred in *Haley v. Ohio*, supra, *Ashcraft v. Tennessee*, supra, *Watts v. Indiana*, supra,

and *Crooker v. California*, 357 U.S. 433, 2 L. Ed. (2d) 1448, 78 S. Ct. 1287 (1958). There were no false inducements to confess such as existed in *Spano v. New York*, 360 U.S. 315, 3 L. Ed. (2d) 1265, 79 S. Ct. 1202 (1959), and *Turner v. Pennsylvania*, 338 U.S. 62, 93 L. Ed. 1810, 69 S. Ct. 1352 (1949). There was no indication of physical abuse such as occurred in the case of *Reck v. Pate*, supra, *and Haley v. Ohio*, supra. The petitioner could not have been in doubt as to the reason for his detention inasmuch as he surrendered to the police, as distinguished from the factual situations in the *Turner v. Pennsylvania*, supra, and *Harris v. South Carolina*, 338 U.S. 68, 93 L. Ed. 1815, 69 S. Ct. 1354 (1949) cases. The total number of officers interrogating the petitioner was four, including Officer Usher, Lieutenant Wakeley, Detective Cockburn and Detective Peek, as distinguished from the factual situations in *Chambers v. Florida*, 309 U.S. 227, 84 L. Ed. 716, 60 S. Ct. 472 (1940), *Ashcraft v. Tennessee*, supra, *Haley v. Ohio*, supra, *Spano v. New York*, supra, and *Crooker v. California*, supra. Petitioner was an adult person, having a wife and child, and while the age of the petitioner is not contained in the record, some indication of his age may be found from his wife's testimony that she had been employed for 14 years for the same firm (R. 129), as distinguished from the case of *Haley v. Ohio*, supra, *Payne v. Arkansas*, 356 U.S. 560, 2 L. Ed. 975, 78 S. Ct. 844 (1958), and *Gallegos v. Colorado*, U.S. , 8 L. Ed. (2d) 325, 82 S. Ct.

The petitioner from his testimony on direct and cross examination appears to be of average intelligence and in fact he had been employed as a skilled workman (R. 94). This is a very different situation than that found in the case of *Fikes v. Alabama*, supra, *Spano v. New York*, supra, and *Harris v. South Carolina*, supra. While there is a contention that the post confession procedure was unwarranted, yet there is a dearth of testimony in this regard, as heretofore argued.

The police were not a new experience to the petitioner such as faced the accused in the cases of *Haley v. Ohio*, supra, and *Gallegos v. Colorado*, supra. In fact the petitioner in this case was a mature man, married, a skilled laborer of average intelligence who admitted to convictions of five serious crimes, including armed robbery, who had been paroled when he entered the State of Washington. With this background the petitioner seeks to put himself on the same footing as the 15 year old boy involved in *Haley v. Ohio*, supra, and the 14 year old boy involved in *Gallegos v. Colorado*, supra.

The case of *Haley v. Ohio*, 332 U.S. 596, 92 L. Ed. 224, 68 S. Ct. 302 (1948), differed factually from this case in the following respects: the accused was only 15 years of age, there was some evidence of physical violence against his person, he was questioned continuously for five hours by relay teams of police officers,

he was questioned until 5 a.m. without being permitted any time for sleep, his mother *actually* attempted to visit him and was refused, his lawyer attempted to visit him on two occasions and was refused, and this boy was not *asked* if any promises had been made to him or if his statement was voluntary, but was *told* that no promises had been made and in effect that no compulsion or force had been brought to bear in the obtaining of his signed confession. This court held at page 599 of that opinion:

> "What transpired would make us pause for careful inquiry if a mature man were involved. And when, as here a mere child — an easy victim of the law — is before us, special care in scrutinizing the record must be used. Age 15 is a tender and difficult age for a boy of any race. He cannot be judged by the more exacting standards of maturity. That which would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens."

In the very recent case of *Gallegos v. Colorado*, U.S: , 8 L. Ed. (2d) 325, 82 S. Ct. , the accused was a boy of only 14 *years of age* who was detained without friends or counsel for five days. At the *end* of which period he signed a confession. The following was set forth in that opinion at page 328, L. Ed. (2d):

> "The youth of the suspect was the crucial factor in Haley v. Ohio . . . "

The court further held on page 328 of the opinion:

> "The fact that petitioner was only 14 years old puts this case on the same footing as Haley v. Ohio, (US) supra"

and continuing on page 328, this court held:

> "That is to say, we deal with a person who is not equal to the police in knowledge and understanding of the consequences of the questions and answers being recorded and who is unable to know how to protect his own interests or how to get the benefits of his constitutional rights."

At page 329 this court held:

> "He cannot be compared with an adult in full possession of his senses and knowledge of the consequences of his admissions. He would have no way of knowing what the consequences of his confession were without having advice as to his rights — from someone concerned with securing him those rights — and without the aid of more mature judgment as to the steps he should take in the predicament in which he found himself."

A very different factual situation, of course, is presented in the case of the petitioner, Raymond Haynes. The petitioner's background, especially his prior experience with the police, and his having been on parole, must have, in practical effect, equipped him to deal

with the police on a far more equal footing than the average adult. The petitioner was not only "an adult in full possession of his senses and knowledgeable of the consequences of his admissions" (*Gallegos v. Colorado*, supra) but was an adult with considerable first-hand knowledge of the processes of the criminal law. Experience in interrogation indicates that the will to resist confessing by a person with such an extensive background, is not easily overborne.

The factual situation in this case does not support the language found in *Ashcraft v. Tennessee*, 322 U.S. 143, 88 L. Ed. 1192, 64 S. Ct. 921 (1944) to the effect that:

> "We think a situation such as that here shown by uncontradicted evidence is so inherently coercive that its very existence is irreconcilable with the possession of mental freedom by a lone suspect against whom its full coercive force is brought to bear . . . "

The totality of the undisputed circumstances indicates that while petitioner was desirous of contacting his wife, he was not induced to confess against his will to achieve this end and that his will was at all times to confess.

CONCLUSION

On the basis of the foregoing, the respondent respectfully requests that the petitioner be denied relief and that the decision of the Supreme Court of the State of Washington remain in full force and effect.

Respectfully submitted,

JOSEPH J. REKOFKE

JOHN J. LALLY

GEORGE A. KAIN

Spokane County Court House
Spokane, Washington

Counsel for Respondent.

Office-Supreme Court, U.S.
FILED
FEB 9 1963
JOHN F. DAVIS, CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 147

RAYMOND L. HAYNES,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF WASHINGTON

SUPPLEMENTAL BRIEF FOR PETITIONER

LAWRENCE SPEISER
1101 Vermont Avenue, N. W.
Washington 5, D. C.

FRANCIS HOAGUE
1410 Hoge Building
Seattle 4, Washington

Attorneys for Petitioner

MARK A. WEISS
WILLIAM W. ROSS
Of the District of Columbia Bar

WILLIAM L. DWYER
DAVID SKELLENGER
LEROY C. KINNIE
Of the Washington Bar

Of Counsel

INDEX

	Page
Explanatory Note	1
Argument	2
I. Petitioner's conviction must be reversed because the jury was permitted to consider evidence obtained as a result of petitioner's arrest without "probable cause" and detention in violation of his rights under the Fourth and Fourteenth Amendments	2
A. There was no probable cause for petitioner's arrest	2
B. Petitioner's statements were the fruit of his unlawful arrest and detention	6
C. The admission of petitioner's confessions in a state criminal proceeding is barred by the Fourteenth Amendment	7
II. Due process of law is denied by the admission into evidence of a confession obtained under the circumstances of this case	9
A. Petitioner's confession was involuntary	9
B. Petitioner's confession was obtained in violation of procedural due process	12
Conclusion	17

Table of Citations

CASES:

Ashcraft v. *Tennessee*, 322 U.S. 143 (1944)	10, 11
Betts v. *Brady*, 316 U.S. 455 (1942)	15
Blackburn v. *Alabama*, 361 U.S. 199 (1960)	11
Bynum v. *United States*, 262 F.2d 465 (D.C. Cir. 1958)	6
Carroll v. *United States*, 267 U.S. 132 (1925)	3
Chambers v. *Florida*, 309 U.S. 227 (1939)	12
Cicenia v. *LaGay*, 357 U.S. 504 (1958)	13, 15
Crooker v. *California*, 357 U.S. 433 (1958)	13, 15
Culombe v. *Connecticut*, 367 U.S. 568 (1961)	10
Eaton v. *Price*, 364 U.S. 263 (1959)	2